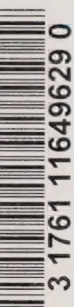


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Critique Royal commission inquiry into labour disputes  
Hearings

v. 28

April, 1967.







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**ROYAL COMMISSION**  
**INQUIRY INTO LABOUR DISPUTES**

565c

**HEARINGS HELD AT**  
**PORT ARTHUR**

**VOL. NO.**

**DATE**

28

April 25, 1967

*Official Reporters*

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IN THE MATTER OF The Public  
Inquiries Act, R.S.O. 1960,  
Ch, 323

- and -

IN THE MATTER OF an Inquiry  
Into Labour Disputes

BEFORE:

The Honourable Ivan C. Rand,  
Commissioner, at the Court  
House, Port Arthur, Ontario,  
on Tuesday, April 25th, 1967

E. Marshall Pollock

Counsel to the Commission

APPEARANCES:

G.B. Weiler, Q.C.

)

Private Individual

Norman E. Richard

)

Fort William-Port

General Secretary

)

Arthur and District

F. Mazur

)

Executive Officer

)

Labour Council





Port Arthur, Ontario

April 25th, 1967

---On commencing at 10:00 a.m.

MR. POLLOCK: The Hearings  
open this morning with Mr. G.B. Weiler, Q.C.

I understand, Mr. Weiler, you  
are appearing as an individual and not for  
any organization?

MR. WEILER: That is correct,  
sir.

MR. POLLOCK: I can tell you  
that both the Commissioner and I have read  
your brief but the manner of presentation is  
up to yourself. If you want to go through  
it, we have some questions we would like to  
ask about matters raised in your brief and  
perhaps you might go through it and we can  
deal with the questions as they arise.

MR. WEILER: Sir, and Mr.  
Commissioner, first of all, if I lapse from  
time to time and address you by your former  
judicial title, I want you to know that it  
is ~~partly~~ out of reverence.

THE COMMISSIONER: There will  
be no contempt.

MR. WEILER: No. I am very  
happy to have the opportunity of presenting  
some of my views gained from some practice  
in this field of labour relations. I certainly





1 am not in a position to offer any startling  
2 solutions but there are certain positions that  
3 I have taken and I have expressed them in  
4 the brief and in the light of Mr. Pollock's  
5 remarks, I won't then, read the whole brief.  
6 Maybe I might offer some additional comments.

7 THE COMMISSIONER: Just take  
8 your own course, because we want to hear  
9 everything you have to say and it may be,  
10 I think you get sometimes, ~~different~~ aspects of the  
11 questions through your ears rather than through  
12 your eyes.

13 MR. WEILER: The thing that has  
14 bothered me is, in general, number one, the  
15 need for remedies, prompt remedies to correct  
16 injustices that are created through wrongful  
17 use of force and the second thing that has  
18 concerned me is this campaign that has been  
19 carried on to remove what I feel has been some  
20 safeguard, even if it has not been entirely  
21 successful and even though there may be room  
22 for substantial improvement, there must be  
23 some ways and means of curbing the wrongful  
24 activities of people who interfere with and  
25 injure others.

26 Now, I feel that compulsory  
27 arbitration in its present form is not a  
28 complete solution. You do have a problem  
29 of human nature and every now and then people,  
30 at least union leaders tell me, that it is





1 futile to try to reason with a large group.  
2 They say that at certain times, maybe once in  
3 20 years, a union group feels that they have  
4 to go on strike sort of, to get it off their  
5 chest and get it out of their system. They  
6 have to be hurt, maybe a little bit, in the  
7 course of their efforts to inflict economic  
8 harm on the employer. That, of course, is  
9 a realistic solution but it is not an idealistic  
10 solution.

11 THE COMMISSIONER: Do you  
12 think it is wholly necessary? Take, for instance  
13 - and I am speaking only on the basis of  
14 hearsay - take the Dominion Foundry in Hamilton:  
15 I am not familiar with all the details but I  
16 happened to meet an employee of that company  
17 over the time of several hours. We discussed  
18 the conditions there and I was, I must say, a  
19 bit astonished to find complete acceptance  
20 on his part and, as he said, on the part of  
21 the workers there, of the arrangements that  
22 are in effect in that company. I don't know  
23 whether they have any strikes or have had  
24 them or not, I know nothing about that, but  
25 I am dealing only with the statements. What  
26 do you say of a situation of that sort where  
27 you have a basis of reasonable satisfaction?

28 MR. WEILER: Sir, I believe  
29 that an employer has an obligation to try  
30 to make conditions such that an employee will



1 feel the utmost loyalty to him, will exert  
2 his best effort. We are small employers in  
3 our office but we have 20 or more stenographic  
4 staff. I think if we have had any success  
5 with our staff - and we are proud of them and  
6 think they are about the best - I think it has  
7 come through, number one, a recognition of  
8 each and every one of them as individuals.  
9 I want members of our profession, when they  
10 come in, lawyers on our staff when they come  
11 in the office in the morning, to say good-  
12 morning to them, to say good-morning as they  
13 are going through the office, to be courteous  
14 at all times, to be understanding of some of  
15 their problems when they need some special  
16 help. I think that they should participate  
17 to some extent in the success of the  
18 enterprise and for a long time back I have  
19 found that a profit-sharing principle was  
20 substantially sound and I don't know why  
21 unions, except for maybe selfish reasons,  
22 have not found it desirable to follow that  
23 principle. I am beginning to think that  
24 maybe it is for the status of the union that  
25 they are more concerned rather than maybe the  
26 benefits to the employees.

27 I have discussed this with quite  
28 a number of union leaders with whom I am on  
29 a fairly friendly basis, even though I  
30 represent management, and they don't give a





1 satisfactory answer to it except that they  
2 say that they want to always be able to show  
3 their people what they are going to get. But  
4 that does not bring out the best from the  
5 employees and I think the Dominion Foundries  
6 in one way or another, has implemented some  
7 form of profit-sharing. We have a form of  
8 profit-sharing in the sense that we try to  
9 maintain - I am not talking to the public -  
10 we should try to maintain basic salaries  
11 equivalent to the average good salaries in  
12 the business section of the city and then over  
13 and above that there should be a participation  
14 in the results of their efforts and much of  
15 it is due to an extra 10 per cent or 15 per  
16 cent diligence in output of work.

17 So I believe, therefore, that  
18 it is, number one, a recognition of the employee  
19 as an individual, as a person, not a number  
20 and it irritates me when I hear people talking ----

21 THE COMMISSIONER: I don't  
22 think anyone could challenge that. You have  
23 respect and self-respect.

24 MR. POLLOCK: I think one of  
25 the basic objections, I suppose, to any type  
26 of profit-sharing plan, is the difficulty  
27 in articulating the basis of what is the profit  
28 to be shared and the fluctuation of auditors'  
29 techniques and it lends itself to considerable  
30 abuse if the employer so sees fit to abuse it.





1 This, I suppose, is the objection that the unions  
2 raise to it, is that they haven't got any  
3 control over the prime base of what their share  
4 of this profit is going to be based on. The  
5 Dominion Foundry and Steel Company, of course,  
6 are in a fortunate circumstance in that they  
7 have across the street from them a very large  
8 company of equivalent size, probably, engaged  
9 in the same enterprise - Stelco, who are  
10 organized with unions - and they, therefore,  
11 have a gauge of acceptability. They can look  
12 across and say "What are the employees under  
13 the union circumstances getting and what are  
14 they content with and we will reflect that  
15 in our situation?" It is a very close  
16 comparison, one against the other and as long  
17 as they keep that level up, I don't know  
18 whether it is purely altruistic or perhaps  
19 an approach designed to keep the union out  
20 of the plant, keep the employees happy -  
21 whichever is the case it does, in fact, keep  
22 the employees happy. As long as this thing  
23 is not abused, it works. The problem that  
24 is faced by a considerable number of unions  
25 is that many employers are not that beneficial  
26 or as beneficial as yourself, or have the  
27 same interest as yourself.

28 MR. WEILER: They are  
29 suspicious of the accuracy of the profits  
30 but they seem to forget that there is a watch dog



1 by the name of The Department of National Revenue,  
2 which is pretty effective in determining the  
3 quantum of profits of a company.

4 MR. POLLOCK: Well, with the  
5 exception that some of the profits are not  
6 distributable profits and they can be allocated  
7 into expansion of plant, they can be attributed  
8 to capital appreciation so that there may be  
9 a very little amount of money that is dividendable,  
10 if we can use that term, ~~it~~ it would probably  
11 be the same measure as would be for the profit-  
12 sharing. As far as the shareholders are  
13 concerned, the expenses of capital, the  
14 appreciation in capital accrues to their  
15 benefit. As far as the employees are concerned,  
16 unless it is paid out to them, this does not  
17 accrue to them at all.

18 MR. WEILER: I realize that  
19 there is the area but these are the mechanics  
20 of carrying out a principle.

21 THE COMMISSIONER: There is no  
22 doubt that it has been tried in many cases  
23 in the United States successfully. It strikes  
24 me that it all depends upon the attitude  
25 primarily of the the employer. What is his  
26 attitude towards the function that he is  
27 performing for society? If he looks upon  
28 it as a social function, and that is what it  
29 is irrevocably resolving itself into today,  
30 on which the whole structure of society is built,





1 every change he makes, every fundamental  
2 change in construction, in the elaboration of  
3 a city, for instance, and the establishment  
4 of zones for this, that and the other things in  
5 which he takes part and gives leadership,  
6 everything he does of that nature adds to  
7 the involvement of his industry with the  
8 community.

9 MR. WEILER: That is true.

10 THE COMMISSIONER: And he  
11 looks upon himself as a trustee of community  
12 interest with the return as it is today, of  
13 profit, whatever he may make depending upon  
14 his skill, his insight, his imagination, his  
15 inventiveness and his initiative. All of  
16 that goes to him as a return to him, but  
17 fundamentally he is working out a social  
18 function for which he must have the cooperation  
19 of workers. It seems to me that that attitude  
20 has to become established before there will be  
21 satisfaction on both sides.

22 MR. WEILER: And in this modern  
23 day, where so much of the industrial and  
24 commercial life is in the hands of professional  
25 managers, in behind the social problem is a  
26 moral problem because, after all, it is the  
27 moral attitude that guides, in effect, the  
28 social principles.

29 THE COMMISSIONER: I must say  
30 it strikes me that we are pretty well erasing





1 from many of our own material relations, any  
2 material sense of morality. That seems to have  
3 gone by the board, almost.

4 MR. WEILER: Unfortunately it  
5 is lacking, I agree sir. But idealistically,  
6 it is a moral problem.

7 THE COMMISSIONER: It is pretty  
8 hard sometimes to separate an economic, political  
9 a social, a moral problem. They are all  
10 interwoven today.

11 MR. WEILER: But behind it all  
12 it seems to me that there is the human  
13 intelligence with the overriding ---

14 THE COMMISSIONER: I would accept  
15 that, but all I say is that I don't think it  
16 is effective today.

17 MR. WEILER: I agree, but that  
18 is the direction, I think in which you have  
19 to move and I am not trying to and I would not  
20 want anyone to sneer at me as being a moralist  
21 because that is a technique that is sometimes  
22 used.

23 THE COMMISSIONER: It is a  
24 term of degradation.

25 MR. WEILER: It may take  
26 centuries of education.

27 THE COMMISSIONER: And that  
28 will, in turn, depend upon the principle of  
29 education that is followed.

30 MR. WEILER: Dealing with some



1 more specific things I do feel that with all  
2 its frailty our Ontario conciliation procedure  
3 is still a procedure that is very helpful and  
4 very effective. I am a little bit concerned  
5 even about the trend of the Department of  
6 Labour towards eliminating conciliation boards,  
7 because so frequently it is in conciliation  
8 boards that you get outsiders who will bring  
9 maybe a community view in recommendations and  
10 they will outline that view in the reasons  
11 for their recommendations. I am not happy  
12 about some boards which, when they are not  
13 successful in bringing the parties to an  
14 agreement, just report "No success". I feel  
15 that a thinking chairman at least of a  
16 conciliation board should be guided by some  
17 principles and should express those principles  
18 in support of the recommendations that he may  
19 make.

20 I say that, unfortunately, there  
21 is not available to conciliation boards the  
22 statistical information, many facets of  
23 information that maybe a board should have in  
24 dealing with problems, some idea of the  
25 community situation. The boards listen only  
26 to the two parties. It seems to me that  
27 maybe conciliation board chairmen and  
28 arbitration board chairmen should have  
29 access to more information, more evidence and  
30 the technique of presentation maybe should be





1 changed. Maybe sometimes it can be tested by  
2 cross-examination, even if the questions are  
3 put through the chairman.

4 MR. POLLOCK: Perhaps it is  
5 our questioning that is causing you to jump  
6 back and forth through your brief. Perhaps  
7 it might be more beneficial if you did go  
8 through the brief in the same order as you  
9 have set it out.

10 MR. WEILER: I am not going  
11 you,  
12 to labour / Mr. Commissioner, really with the  
13 brief and I am going to make some comments  
14 as I go through it and just leave it at that.

15 THE COMMISSIONER: I think,  
16 though, that what we have been discussing  
17 really underlies the whole relation of labour  
18 and management.

19 MR. WEILER: That is right.

20 MR. POLLOCK: Again on the  
21 matter of procedure, you have divided your  
22 brief very well, I think, into different  
23 topics, the first being the general commentary  
24 and then going through the picketing at  
25 different stages and some other recommendations  
26 afterwards in relation to injunctions and the  
27 Labour Relations Board.

28 MR. WEILER: I am going to go  
29 through and make some comments.

30 MR. POLLOCK: Fine. I have  
a couple of comments arising out of your general



1 | comments so, if I have an idea when you are  
2 | going to leave that area of discussion, I can  
3 | ask my questions.

4 |                   MR. WEILER:    Again, dealing  
5 | with conciliation officers and conciliation  
6 | boards, I would hope that the Department of  
7 | Labour would follow a policy of making it  
8 | attractive for experienced and successful  
9 | conciliation officers and mediators and chairmen  
10 | of boards to remain in the service of the  
11 | Department.    Recently there has been a man  
12 | returned to the Department for whom I had very  
13 | high regard years ago and, again he has shown -  
14 | although he was out in the business world for  
15 | a number of years - he has gone back to the  
16 | Department and he is showing again, how  
17 | valuable is experience because it is a technique  
18 | that you don't learn in the books;   it takes  
19 | years.

20 |                   THE COMMISSIONER:    There is  
21 | no doubt about that.

22 |                   MR. WEILER:    These people are  
23 | the ones whom the Department should rely upon  
24 | and they should have more of them.

25 |                   In general, on the question of  
26 | arbitration, including compulsory arbitration  
27 | during the term of the agreement, the methods,  
28 | in my opinion, the methods of presentation  
29 | should be improved and I am going to say that  
30 | I have a view that the arbitrator should strive





1 to apply the law of the land and that he  
2 should leave any substantive changes in the  
3 law, maybe to the legislators. That is the  
4 only way<sup>in</sup> which, in my opinion, you can get  
5 any reasonable degree of uniformity. It is  
6 true that is a traditional view that maybe  
7 we took out of law school, but I am a little  
8 concerned about some trend among arbitrators  
9 to embark on establishing a whole new body of  
10 jurisprudence, with views on the law which are  
11 not consistent with the decisions laid down  
12 by the judiciary. So, I think that they  
13 should not try to set up a distinct body of  
14 principles or, in other words, a new jurisprudence.  
15 I think that they should try, as far as  
16 possible, to administer the law as it is  
17 commonly known and by which people outside of  
18 union-management relations are bound. There  
19 should not be one principle, one law, relating  
20 to a person who is under a collective agreement  
21 and another principle relating to a person  
22 working in another part of the same organization  
23 who is not under collective agreement.

24 THE COMMISSIONER: All I can  
25 say there is that I am a bit leary, if I may  
26 use that word, about generalities of this sort.  
27 I like to have a concrete instance in each  
28 case, what is meant and what is your example  
29 of this departing from a legal rule. We are  
30 really in a new context in some respects.



1 MR. WEILER: My Lord, one  
2 expression that was used in an arbitration  
3 award recently, and it was the Port Arthur  
4 Ship Building Company, the expression was  
5 used that the arbitrators were cutting the  
6 umbilical cord. In effect, in my interpretation  
7 of the decision, they were embarking on a  
8 different set of principles.

9 THE COMMISSIONER: I think  
10 there are really metaphors in the history  
11 that sometimes cause a great deal of harm.

12 MR. POLLOCK: Different  
13 principles from the ordinary, traditional  
14 master and servant principle?

15 MR. WEILER: That is right.

16 MR. POLLOCK: What you are  
17 saying, really, is that you are not in support  
18 of the thesis of the now Mr. Justice Laskin  
19 in the Peterborough Lock Company, the common  
20 law of collective bargaining that once you  
21 are in a collective agreement situation, there  
22 is a new area of concern, that principles are  
23 different than in the ordinary master and  
24 servant relationship where there are no  
25 collective agreements contemplated.

26 MR. WEILER: I think that should  
27 be the province of the legislature to set it  
28 on and properly, maybe there should be these  
29 other principles but I don't think it should  
30 be in the hands of individual arbitrators to





1 outline and establish those principles. That  
2 is my point. I am not saying there should  
3 not be those principles because there are some  
4 new concepts that I am in agreement with.  
5 There would be, I think, good developments  
6 of the law but it seems to me that from a  
7 long-range point of view, we can't do it on  
8 this ad hoc basis.

9 THE COMMISSIONER: Yes, I  
10 would say that. As students of common law,  
11 we are dealing with the concrete instance  
12 that goes from instance to instance. The  
13 generalizations may be expressed but I think  
14 they must bear the test of the individual  
15 justification.

16 MR. WEILER: Commenting on  
17 page 6 of the brief, and the illustration,  
18 I am concerned about the attitude of some  
19 unions to deliberately plan an organizational  
20 picketing campaign and the evidence that  
21 sometimes these are deliberately planned and  
22 they are not spontaneous stoppages of work  
23 on the part of the employees, is illustrated  
24 by one union at least, having readily available  
25 a form of recognitional agreement. I would  
26 like to read some of the language which  
27 indicates that it was not drawn by some  
28 working employee, nor by a local business  
29 agent.

30 MR. POLLOCK: This is in the



1 construction industry, is it?

2 MR. WEILER: Well, it was not  
3 confined to construction. In this illustration  
4 that I refer to, the company was engaged in  
5 several facets of work. One of them happened  
6 to be a sub-contract in connection with a  
7 development program but there were other  
8 industrial types of work being carried on  
9 by the same company.

10 MR. POLLOCK: The point I make  
11 is the most common site of organizational  
12 picketing is the construction industry.

13 MR. WEILER: That is right  
14 and it is in connection with the construction  
15 aspect of the companys' operations that the  
16 organizational picketing took place.

17 The preamble read:

18 "Whereas the employees of  
19 the company have unanimously  
20 joined the union and accepted  
21 the union as their bargaining  
22 agent and, whereas, the  
23 company has agreed with the  
24 employees to acknowledge the  
25 union as a bargaining agent  
26 and, whereas, the union has  
27 acknowledged that they are  
28 prepared to act as the  
29 bargaining agent for the  
30 employees of the company.





1 Now, this indenture witnesseth  
2 that in consideration of the  
3 execution of this agreement,  
4 the parties hereto agree as  
5 follows:

6 1. The employer shall forthwith  
7 recognize the union as the  
8 sole and exclusive bargaining  
9 agent on behalf of all of its  
10 employees save and except  
11 foremen and those above the  
12 rank of foreman, office and  
13 technical employees.

14 2. The company agrees to negotiate  
15 with the union in accordance  
16 with the provisions of the  
17 Ontario Labour Relations Act  
18 and acknowledge that all steps  
19 have been properly taken by  
20 the employees and the  
21 bargaining agent up to and  
22 including the operation of  
23 section 11 of the said Act.

24 3. The company agrees to return  
25 each employee to his respective  
26 job held prior to the (blank)  
27 date and further agrees not to  
28 threaten, dismiss, intimidate  
29 any employee because of his  
30 participation in the incident



of (blank) date.

4. The bargaining committee of the union agree to recommend unanimously, ratification of this settlement to the members."

Now, that smacks to me, of a planned, deliberate program and I am skeptical of some of these spontaneous stoppages.

MR. POLLOCK: It seems to contemplate in the agreement that there has been a stoppage occur. Are any of these agreements signed by a simple presentation to the company while the people are still working, that they now have the majority saying "You now have the majority support of the men on this project. Would you sign this?". Are they ever signed on this basis?

MR. WEILER: Only when the stoppage was underway and during the course of the stoppage.

MR. POLLOCK: Is there any proof offered to the company of the first recital, as to whether or not they had union support - I am sorry, membership support?

MR. WEILER: There was some evidence indicating majority of a segment - not unanimous support.

MR. POLLOCK: Of course, you don't need unanimous for certification.





1 MR. WEILER: That is right, but  
2 the simple facts are that it short-circuited  
3 the entire procedure.

4 THE COMMISSIONER: Well, they  
5 still remained outside of the Act so far as  
6 certification went?

7 MR. WEILER: Well, the  
8 recognition gives them virtually ---

9 THE COMMISSIONER: But they  
10 have to follow the provisions of conciliation  
11 with that recognition, but they didn't attempt  
12 to use that as the basis for certification  
13 alone.

14 MR. WEILER: Oh, no, they don't  
15 need it for certification.

16 THE COMMISSIONER: To that extent  
17 they are outside the Act?

18 MR. WEILER: Oh, yes.

19 THE COMMISSIONER: Had they gone  
20 into a strike?

21 MR. WEILER: Yes.

22 THE COMMISSIONER: Then that  
23 was an illegal strike.

24 MR. WEILER: No question about  
25 it and, as I say, the illustration is there  
26 on page 6.

27 MR. POLLOCK: Of course, any  
28 strike that takes place prior to being in a  
29 position to ask for conciliation is illegal  
30 under 54 (2).



1 MR. WEILER: Or until conciliation  
2 procedures are completed.

3 MR. POLLOCK: And you are either  
4 certified or you don't have an agreement in  
5 existence so that conciliation procedure will  
6 be available to you and certain activity of  
7 that nature is, by virtue of the Labour  
8 Relations Act, unlawful.

9 MR. WEILER: That is right.

10 MR. POLLOCK: What do you  
11 think about that?

12 MR. WEILER: Well, I think that  
13 if we are going to try and stay out of the  
14 jungle, we should follow the rules.

15 MR. POLLOCK: Well, it prohibits  
16 a bona fide attempt of a group of people in a  
17 unit from getting together without any procedure,  
18 without getting a union, without doing these  
19 things, to concertedly withdraw their labour  
20 and say "We are not going to work under these  
21 conditions unless you do something for us",  
22 and what the Labour Relations Act is saying  
23 is "You can't do this unless you (a) form  
24 yourselves into a union, an acceptable union,  
25 and (b) go to the Labour Relations Board and  
26 get certified and (c) serve notice to go through  
27 all the conciliation procedure".

28 MR. WEILER: Well, again, the  
29 idea of the collective action, I think is just  
30 as objectionable as some of the tactics that





1 were used by employers a half a century ago to  
2 prevent any organizational work of a proper  
3 bargaining agent.

4 THE COMMISSIONER: It doesn't  
5 require that they enter into a union. It simply  
6 says that if they strike together, it is illegal.

7 MR. WEILER: If acting in  
8 concert, that is right.

9 THE COMMISSIONER: It is no  
10 requirement of a union but it is the mass action  
11 that is prohibited without conciliation.

12 MR. WEILER: That is right.

13 THE COMMISSIONER: We were  
14 just considering the effect of 54.

15 MR. WEILER: That is right,  
16 section 54 (2) - I guess the whole of section  
17 54 contemplates a union-employer relationship  
18 as contrasted with efforts by a small group  
19 or by a group of employees who have not formed  
20 themselves into a form of trade union.

21 MR. POLLOCK: The application  
22 of section 54 (2) depends on section 13, which  
23 is the power to appoint a conciliation officer  
24 which contemplates the circumstances that you can  
25 have a recognition situation, voluntary  
26 recognition of a union and an agreement that  
27 has already been in force and then terminated  
28 so it is a section 40 notice question and the  
29 third case of the first certification type of  
30 situation under section 11.



1 THE COMMISSIONER: That would  
2 mean this, that if they don't form a union and  
3 there is no recognition, they can strike  
4 without any illegality.

5 MR. WEILER: An individual  
6 employee may withdraw his services but he  
7 may not acting in concert with others. The  
8 thing that strikes me is that I can't understand  
9 why, in the situation that I described, an  
10 attempt is not first made to request  
11 recognition before the group action is taken  
12 by an unlawful strike. That is the thing  
13 that bothers me and there must be a remedy  
14 because so many other people are hurt including  
15 people who would not come within a bargaining  
16 unit. The general public think only of people  
17 in the bargaining unit but they are only part  
18 of the people who are affected and there  
19 are a great many other employees adversely  
20 affected, even though they might not lose  
21 their jobs immediately. Their opportunity  
22 of bettering themselves by increased earnings,  
23 and so on, of the company are going to obviously  
24 be affected if the company cannot make the  
25 earnings sufficient to cover all of them.  
26 All I say is that there must be some adherence  
27 to the principles. I should not be labouring  
28 this, but in this part of the country I think  
29 that a lot of us feel that there should be a  
30 little more emphasis by maybe even news media



1 on that theme.

2 I just have one or two other  
3 comments that I wanted to make and they relate  
4 to comments on pages 21 and 22. It seems to  
5 me that there should be an investigative and  
6 enforcement arm of the Department of Labour,  
7 probably more preferable, the Department of  
8 Labour than the Ontario Labour Relations Board  
9 because it might derogate from the so-called  
10 neutrality of the board if it has an arm for  
11 investigation and enforcement. So, I think  
12 maybe the Department of Labour should have  
13 that arm. My feeling is that so many times  
14 the Department of Labour is only concerned  
15 about smoothing things over at any price,  
16 covering thing up so to speak. I don't mind  
17 saying that that attitude on the part of some  
18 of the conciliation officers, I think, is wrong.

19 MR. POLLOCK: They take that  
20 pattern, I suppose, from the employers and the  
21 unions.

22 MR. WEILER: They leave it to  
23 the private parties to fight it out and the  
24 public be damned. That is about the size  
25 of it.

26 MR. POLLOCK: On your first  
27 point, of course, the function of enforcement  
28 in the United States is an arm of the National  
29 Labour Relations Board. It is a separate  
30 function but that is a mechanical thing.





1 MR. WEILER: No one can tell me  
2 how it works. Does it have the effect of  
3 reducing the neutral position of the Board?

4 MR. POLLOCK: No, I don't think  
5 so, I think it functions as an independent  
6 arm of the National Labour Relations Board. It  
7 doesn't take any instructions from the National  
8 Labour Relations Board. It may have, I don't  
9 know.

10 MR. WEILER: There is no doubt  
11 about it that some people who are better qualified  
12 to do that type of investigative work should  
13 be available and my view is that it should not  
14 be left to employers or to employees to do it  
15 on their own. Under the statute there are a  
16 growing number of sections which give the  
17 employee the opportunity of calling on officers  
18 of the Board to assist them and to carry out  
19 the investigative and enforcement work. I  
20 think that a similar provision should be made  
21 for the non-union groups.

22 I feel that when employers have  
23 to shoulder the burden of seeking leave to  
24 prosecute and of conducting prosecutions, it  
25 has a very definite detrimental effect, not  
26 only with the employees who may have been sheep  
27 and misled into some wrongful action, but to  
28 a lot of other employees who hate to see one  
29 of their brethren sacrificed and maybe they  
30 feel they may be discriminated against by being



1 picked out as an example. So I don't think  
2 an employer should be put in that position  
3 of having to be exposed to a charge that he  
4 has been vindictive, for example, because it  
5 has the effect of deteriorating the relations  
6 between him and the loyal employee.

7 THE COMMISSIONER: What do you  
8 think of such a case as arose in Gaspe? You  
9 are familiar, I suppose, with that?

10 MR. WEILER: That is the one  
11 where there was a civil action which flowed from it.  
12 That, of course, is a matter, My Lord, for the  
13 company vis-a-vis the union.

14 THE COMMISSIONER: Yes, that is  
15 true, but even the union comprises the working  
16 group under that employer.

17 MR. WEILER: I must confess  
18 that I think of the union ----

19 THE COMMISSIONER: As separate  
20 from the people?

21 MR. WEILER: There are so many  
22 illustrations of how that occurs that the  
23 union is an entity separate and distinct from  
24 the employees that it purports to represent.

25 THE COMMISSIONER: What do you  
26 say about proceeding against a union in  
27 relation to a connection that you must establish  
28 between the union and the Act?

29 MR. WEILER: I don't think that  
30 either the employer or the union should be





1 prohibited or precluded from taking private  
2 steps against each other by way of suit for  
3 damages or otherwise. All I am saying is  
4 that the breaches for which there are penalties  
5 provided, should be investigated and enforced  
6 by an arm of either the Department of Labour  
7 or of the Board. Now, I know this, that there  
8 have been flagrant breaches of the statute  
9 and causing great harm to a great number of  
10 people and the immunity for the wrong doers  
11 has been the price of a settlement.

12 THE COMMISSIONER: Yes, there is  
13 no doubt of that.

14 MR. WEILER: And that does  
15 not sit right with me.

16 THE COMMISSIONER: Well, what  
17 would you suggest?

18 MR. WEILER: Again I say that  
19 if there is a wrong doing, in the enforcement  
20 of any statute it should be done by people  
21 who are competent to do it. Now, the ordinary  
22 police and Crown officials, under our present  
23 set-up, are not disposed, some of them are not  
24 competent to investigate ---

25 THE COMMISSIONER: Take the case  
26 now, you have a thousand employees and 200 of  
27 them engage in a wildcat strike that paralyses  
28 the work. What do you conceive the remedy to be?

29 MR. WEILER: Well, there are  
30 penalty provisions ----



1 THE COMMISSIONER: But if you  
2 wanted to take proceedings against the union,  
3 what do you think you would have to show?

4 MR. POLLOCK: What is the basis  
5 of the liability that the union has for the  
6 acts of these employees?

7 MR. WEILER: Now, you are talking  
8 about civil liability.

9 THE COMMISSIONER: Would you  
10 have to show a connection between the union  
11 by an officer or some group to the act or would  
12 you charge the union in the first instance  
13 with liability regardless of its participation  
14 and allow it to recoup itself in any way it  
15 pleases from the men who are involved?

16 MR. WEILER: I will deal with  
17 that aspect in a moment. What I was touching  
18 on was not that type of thing but breaches of  
19 the statute which are independent of any monetary  
20 loss for which recovery might be sought. I  
21 think that as we have officers, people who are  
22 specially equipped to enforce our traffic laws  
23 and are particularly astute at it, there  
24 similarly should be people who are competent  
25 for investigation and for enforcement of  
26 penalties against individuals.

27 THE COMMISSIONER: What you  
28 really are suggesting is the converse of an  
29 ombudsman: You want an independent officer  
30 as prosecutor.



1 MR. WEILER: In a sense, yes.  
2 Not unlike Mr. Pollock referred to, the  
3 enforcement branch of the National Labour  
4 Relations Board.

5 MR. POLLOCK: Let us take  
6 your position. You are confined to, for  
7 example, talking now - at least the first  
8 position you are taking with the offences  
9 under the Labour Relations Act, the unlawful  
10 strike, the unfair labour practices.

11 MR. WEILER: Or offences under  
12 the code.

13 MR. POLLOCK: Well, let us  
14 leave the code for the moment. If, for  
15 example, you leave the burden of establishing  
16 that there has been an unlawful strike with  
17 the employer for the purposes of starting this  
18 machinery going because in many cases the employer  
19 doesn't want somebody else coming in right away,  
20 it may be a very minor unlawful strike, there  
21 may be other reasons why he doesn't want to bring  
22 in this great machinery, but assuming that the  
23 employer takes the initial steps and gets a  
24 declaration from the Board that there is an  
25 unlawful strike, at that stage there ought to  
26 be, as I understand your submission, somebody  
27 from the Department of Labour who would say  
28 "All right, we have got a declaration it is  
29 an unlawful strike. We are going to proceed  
30 in the Magistrate's Court to commit these





1 people on the basis of that declaration".

2 MR. WEILER: Independently  
3 of any future negotiations between the union  
4 and the company?

5 MR. POLLOCK: That is right.  
6 That is your view.

7 MR. WEILER: That is my view.

8 MR. POLLOCK: Turning to the  
9 other question, ----

10 MR. WEILER: There are some  
11 other reasons for that, if I might just add  
12 to that. Not only is it a matter of relations  
13 between the employer and the employees, not  
14 only is it a matter of the union officer sometimes  
15 using the principle of immunity at the expense  
16 of an adequate settlement for the employees  
17 but then there is the other problem of the  
18 straight expense that individual employers  
19 are exposed to in conducting private prosecutions  
20 and of course the fines go to the provincial  
21 treasury.

22 MR. POLLOCK: Well, of course,  
23 in those circumstances, the enforcement  
24 provisions, the union is liable, under the  
25 Labour Relations Act.

26 MR. WEILER: Yes, but the  
27 penalties that are imposed by the Magistrate  
28 don't go to the person who suffered.

29 MR. POLLOCK: No.

30 MR. WEILER: And yet that person



1 assumes the whole burden of that part of the  
2 administration of justice.

3 MR. POLLOCK: That brings us to  
4 the next step, as to the civil liability of  
5 the union for these damages and if you want  
6 to collect damages as opposed to some kind of  
7 fine that is justified on the basis of protecting  
8 the legislation, protecting the integrity of  
9 the Labour Relations Act, fines can be paid  
10 into consolidated revenue, but now you are  
11 talking about recoupment by the company for  
12 these unlawful acts, the consequences of these  
13 unlawful acts which, of course, would have to  
14 be civil liability.

15 MR. WEILER: Well, I haven't  
16 touched on that in my brief and I know the  
17 Commissioner has raised the question. I don't  
18 think that there is any doubt, there is no doubt  
19 in my mind that if responsible officers of the  
20 union, either counsel or procure, or if they  
21 condone or are apathetic and take no action, no  
22 genuine action - and I say "genuine" - then I  
23 think that there should be some vicarious  
24 liability. Maybe the principles that apply  
25 in the tort sphere almost are applicable here  
26 because if an employee goes out on a frolic  
27 of his own, in the accepted case of statutory  
28 liability, the employer is not liable.

29 MR. POLLOCK: The basis of  
30 liability enunciated in those arbitration cases





1 which have proceeded against the union for  
2 the collection of some kind of monetary damages,  
3 Polymer, for example, that is the type of  
4 thing you are referring to?

5 MR. WEILER: That is right.

6 MR. POLLOCK: The union has  
7 to do something to show it is not condoning  
8 this thing and positively withdraw its  
9 support on the part of recalcitrant members.

10 MR. WEILER: I have, in a number  
11 of collective agreements, succeeded in including  
12 provisions in the no-strike clause, setting  
13 out a positive obligation on the part of the  
14 union and its officers to do certain things  
15 in the event of a wrongful stoppage and I was  
16 doing this before Polymer because I felt if  
17 there are rights they have to assume some  
18 responsibility and they just can't sit back  
19 and twiddle their thumbs and go through the  
20 motions. I know of a situation where it was  
21 alleged that, by radio there were signals,  
22 that if a certain message was given to go back  
23 to work, then it meant the opposite.

24 THE COMMISSIONER: That is the  
25 difficulty that may arise in any situation.

26 MR. WEILER: That is one of  
27 the problems but, again, in the enforcement  
28 of the Act, the Unfair Labour Practices, the  
29 investigative arm of the Department will be  
30 much more successful in eliciting the information



1 and finding out just what really went on because  
2 they will be able to get it from people who  
3 know, whereas an employer cannot get that  
4 information.

5 MR. POLLOCK: Of course, if  
6 they are going to be the people prosecuting,  
7 I doubt very much ~~whether~~ they would be able  
8 to get this information.

9 MR. WEILER: But they will  
10 get it from one or two witnesses. There might  
11 be one or two ring leaders out of 100 employees  
12 and there may be 40 employees who are not  
13 sympathetic to the whole thing at all, and  
14 they are irritated at the wrongful acts of  
15 some of these leaders, but they are not  
16 prepared, maybe they are afraid and I can  
17 understand why they would be afraid, to  
18 volunteer the information to an employer, but  
19 they will, under questioning, disclose it, I  
20 think, to an investigation officer who can  
21 use his judgment as to whether that witness  
22 should be called or as to whether it would be  
23 a lead to witnesses who might be subpoenaed  
24 to give the evidence.

25 As you see from the last part  
26 of my submission, although I am subjected in  
27 my own household to some other views sometimes,  
28 I like to rely on the judicial system and I  
29 do not like a proliferation of administrative  
30 boards. I think, from a long-range point of view,



1 we will have greater security through seeking  
2 remedies and adminstrating the law through the  
3 proper judicial system.

4 THE COMMISSIONER: We have  
5 been forced to proliferate administrative  
6 boards.

7 MR. WEILER: That is true.  
8 Maybe we, as lawyers, and lawyer legislators,  
9 have not pressed adequately for changes in the  
10 law, but some of these arguments that are  
11 offered, you know, in connection with hearings  
12 on injunctions that short shrift is given,  
13 that is a matter of mechanics. There is no  
14 reason in the world why there shouldn't be a  
15 competent judge who will hear it and hear it  
16 fully and have time to hear it.

17 THE COMMISSIONER: That is  
18 rather interesting, it has a certain relevance  
19 but in Australia, under the constitution, the  
20 deposit of judicial power is so expressed as  
21 to exclude the jurisdiction of any administrative  
22 authority. A court which, in the strict sense,  
23 administers judicial power, cannot have  
24 associated with it, administrative power,  
25 and that was held by the judicial committee  
26 and as a result of that, of which a contrary  
27 view had been taken for 30 or 40 years, they  
28 had to reorganize their whole labour administration.

29 MR. WEILER: Into what form,  
30 may I ask?





THE COMMISSIONER: Well, to separate the administrative from the judicial, and they provided that one member, say, of the arbitrable board could exercise the power of a judge of the Supreme Court by express appointment to both.

MR. WEILER: Oh, I see.

MR. POLLOCK: They had to split that function between two of them.

MR. WEILER: As you see from my summary, I feel that remedies ought to be available. I think that in Ontario, which is a very large province, (and you are sitting here a thousand miles from Toronto and it is not easy to get relief from an administrative board sitting in Toronto, even if there were power to issue cease and desist orders,) I think that with judges sitting in each county and, bearing in mind that we have companies under both federal and provincial jurisdiction and they are competent to deal with both of them, that better use should be made of our set-up and we should not, as I say, set up a whole new apparatus, one to administer the provincial Act and one for administering the federal Act in order to provide adequate remedy.

THE COMMISSIONER: We are going backwards, in the opposite direction, by forbidding judges to accept these arbitration boards.



1 MR. WEILER: My Lord, I am only  
2 back a week. I understand there have been  
3 two changes since the middle of March.

4 THE COMMISSIONER: I am not sure  
5 if it has yet been put into legislation, but  
6 that is the policy of the government.

7 MR. POLLOCK: I think what you  
8 are talking about now is the enforcement by  
9 injunctive proceedings which has always been  
10 with the court, not the arbitration function.

11 MR. WEILER: Oh, no, I am thinking  
12 of the injunction proceedings.

13 MR. POLLOCK: It still remains  
14 with the courts.

15 MR. WEILER: That is right.

16 THE COMMISSIONER: Of course,  
17 you are not terrified by the name "injunction"  
18 because it was originally used in a court of  
19 equity and the effect of an injunction, I  
20 can't see why it can't be vested in an  
21 administrative tribunal.

22 MR. WEILER: All I am concerned  
23 with is why there should be set up a whole new  
24 apparatus in each individual county again,  
25 where it may only be used on rare occasions.  
26 We don't have very many in the north, here.  
27 I think that in 20 years, I don't think there  
28 have been more than some 20 applications - I  
29 think roughly 20 applications. I would be  
30 interested to know what Professor Krever's count





1 shows.

2 May I just digress for a moment  
3 and make a comment on the first report of  
4 Professor Krever, which I did not read in total ---

5 MR. POLLOCK: You are referring  
6 now to the report on the study of labour  
7 injunctions by editor Dean Carrothers, in which  
8 Professor Krever writes some appreciation of  
9 the injunction procedure?

10 MR. WEILER: That is right. He  
11 comments in there, sir, on the fact that ex  
12 parte orders are obtained and, even though they  
13 are continued, the actions are not continued  
14 through to trial and he seems to draw the  
15 conclusion from that that it was bad in the  
16 first instance to have issued the order. There  
17 has been editorial comment which seems to follow  
18 that line of thought. Now, all I say is that  
19 that is rubbish, as you well know. Just because  
20 you start an action, that doesn't necessarily  
21 mean that you weren't entitled to the remedy  
22 if the situation is cleared, without going  
23 through the whole trial. It is not good  
24 practice, first of all, to maybe clutter up  
25 the courts unnecessarily in order to get what  
26 might be, in effect, a declaratory judgment or  
27 a continuing order and, secondly, to get an  
28 assessment of damages at a great cost to  
29 everybody.

30 THE COMMISSIONER: Wouldn't that



1 strengthen the view that that could be given by  
2 an administrative tribunal in which there was  
3 no question of pursuing an action to its conclusion?

4 MR. WEILER: Well, it is true,  
5 sir, that you can have another body or bodies to  
6 administer and to enforce the law and to provide  
7 remedies.

8 THE COMMISSIONER: You could have  
9 a labour judicial body as well as a labour  
10 administrative body each applying labour law.  
11 There is quite a bit in names; it is sometimes  
12 called an industrial court in which you would  
13 have a power there of action that might be  
14 quite different from the ordinary common law  
15 procedure and the basis of action.

16 MR. WEILER: And it might be,  
17 sir, that in the individual counties, the local  
18 judge might be invested with that power. I  
19 am concerned about this, and we are a thousand  
20 miles away from Toronto, it is difficult to  
21 get action because the problem of adducing  
22 the evidence, of transporting it and so on,  
23 is a real obstacle.

24 MR. POLLOCK: Unless you put  
25 your witnesses on the plane and send them there.

26 MR. WEILER: First of all, you  
27 have the cost factor, secondly you have the  
28 problem of initiating the action and having  
29 notice given and all the rest of it and then  
30 sometimes the planes don't fly and they don't fly



*Nethercut & Young**Toronto, Ontario*

1 from Atikokan and they don't fly from Fort Francis  
2 and they don't fly from a lot of other places  
3 and the expense involved of moving people to  
4 Toronto, for example, to get a declaration of  
5 an unlawful strike is sometimes exorbitant,  
FJN 6 as I well know. The damage that continues  
7 in the meantime is excessive and to a lot of  
8 innocent people. The damage is not just  
9 being suffered by the employees in the bargaining  
10 unit, but by a lot of other employees.

11 THE COMMISSIONER: How would it  
12 be to have a commissioner with authority to  
13 issue a temporary order of that sort, who can  
14 travel to you, rather than you to him?

15 MR. WEILER: Again there is  
16 a problem of how do you get him? You have to  
17 initiate it by some kind of an application.

18 THE COMMISSIONER: You phone  
19 for his presence. They do that, in some  
20 respects, in Australia. The commissioner  
21 goes right to the scene of the disagreement,  
22 or whatever it may be, he has certain authority  
23 which can be exercised anywhere.

24 MR. WEILER: Well, I contemplated  
25 that maybe we might have through this branch  
26 of the Department, an official who might ---

27 THE COMMISSIONER: You are  
28 talking there of a political department?

29 MR. WEILER: That is what I am  
30 concerned about.





1 THE COMMISSIONER: Don't you  
2 think it would be better to have it non-political,  
3 to be independent?

4 MR. WEILER: Very definitely,  
5 that is why I want the judiciary.

6 THE COMMISSIONER: You can have  
7 an independent officer. Take the ombudsman,  
8 he is an independent, public officer. He is  
9 accountable to nobody, really, except ultimately  
10 in his appointment to the government or the  
11 legislature, so theoretically, a policeman is  
12 in that position too: He is a public officer.  
13 He is not a servant of the city, except probably,  
14 if he is a traffic officer, but in his enforcement  
15 of the law, he is really a public officer for  
16 whose action no appointing body is responsible.  
17 That was held years ago and it seems to me that  
18 if you have a public prosecutor, he has got  
19 to be absolutely independent and not subject  
20 to the control of any political influence  
21 because men in politics are just like the men  
22 in business: They don't want to be involved.  
23 Each one of them has to live with the people  
24 who are being proceeded against.

25 MR. WEILER: That is correct, you  
26 have put your finger on it and have expressed  
27 it in much better words than I have been capable  
28 of expressing it, the idea that someone outside  
29 of the immediate parties can come in and  
30 keep the peace, putting it simply. All I am



1 concerned about is that in a large province  
2 like this, and in view of the relative rarity  
3 of these situations, there may be an inclination  
4 to have the person sitting only in Toronto  
5 or Ottawa, as the case may be, because you  
6 would have to have both. I would assume so,  
7 in view of the two jurisdictions, and to get  
8 him to the trouble spot in short order, might  
9 take two or three days.

10 THE COMMISSIONER: Oh, well,  
11 under normal conditions it shouldn't take more  
12 than two or three hours.

13 MR. WEILER: Well, in Toronto,  
14 in the Golden Horseshoe, you can do that, but if  
15 it occurs at Manitouage ---

16 THE COMMISSIONER: If it has  
17 to go to a court it is going to take longer.  
18 You have to prepare the affidavit, you have  
19 to have somebody - if you are going to speak  
20 through somebody who knows the facts, he has  
21 got to be transported from one place to another  
22 or the affidavit has to be.

23 MR. WEILER: In the ordinary  
24 course, if a problem develops at 2:00 o'clock  
25 in the afternoon, the material can be assembled  
26 and before 5:00 it can be presented ---

27 MR. POLLOCK: Can it, if the  
28 fellows are up in Atikokan?

29 MR. WEILER: Yes, because the  
30 information is phoned, the papers are prepared





1 and they drive and they are here the same  
2 afternoon.

3 THE COMMISSIONER: You are  
4 assuming you can go to a judicial officer right  
5 near you.

6 MR. WEILER: That is right,  
7 that is why I want the availability.

8 THE COMMISSIONER: Well, it  
9 might be continued. It would have to be  
10 continued in a very limited way and you  
11 certainly can't use the judges now for  
12 arbitrators.

13 MR. WEILER: I am not thinking  
14 of it as an arbitrator.

15 THE COMMISSIONER: You are  
16 thinking of the injunction only?

17 MR. WEILER: Yes, that type of  
18 remedy. I am speaking against this great  
19 campaign to get rid of all injunctive proceedings.  
20 I am not in favour of it, it is wrong. We have  
21 got to have some quick means.

22 THE COMMISSIONER: That may be  
23 accepted but the question is should you impose  
24 that on a court of justice? Now there is a  
25 great deal against it. In the first place  
26 there is a delusion on the part of labour  
27 that these men are prejudiced except where they  
28 want benefits from the judicial body, but all  
29 of this noise and denunciation is from people  
30 who are ignorant of these facts underlying



1 judicial action. On the other hand, they quote  
2 many outstanding judges who speak of the different  
3 furniture of the mind of the lawyer from that  
4 of the man concerned with the work-a-day life  
5 along with the other workers of the world. Mr.  
6 Lord Justice - he was a first class man, he  
7 wrote a very important work on bills of lading  
8 and shipping contracts - I have forgotten his  
9 name but, in any event, he was a man of high  
10 standing and I read a quotation from his address,  
11 I think in Canada, where he said that you have  
12 got to consider the structure of the legal mind  
13 that has been trained and disciplined in the  
14 accumulated customs of the past. Certainly, all  
15 our laws in effect are customs and that is what  
16 I implied by that term anyway, and he says  
17 that the tendency is for these concepts to harden  
18 and that they don't go along as quickly as they  
19 might.

20 For that reason it seems to me  
21 that it would be better to constitute a new  
22 body, a body of highly trained, intelligent,  
23 well-educated men, who keep on earth, you might  
24 say, and do not concern themselves except in  
25 general principles with the existing law  
26 because in Australia they have done that to a  
27 large extent. We may criticize that, and there  
28 is no question of taking their apparatus and  
29 introducing it here, but we may learn something  
30 from it because they would not give up their



1 present system neither from the point of view of  
2 the employer nor of the employee. They are  
3 accustomed to it. As a matter of fact, you  
4 must become accommodated to every new suit  
5 of clothes, to every new piece of apparatus  
6 in a society and, unless it is outrageously  
7 incompatible with their old mores  
8 then it is accepted, although granted it will  
9 harden into an acceptability <sup>at</sup> the/involves  
10 loyalty to it.

11 MR. WEILER: What has been the  
12 result, insofar as industrial peace is concerned  
13 in Australia?

14 THE COMMISSIONER: Well, I  
15 would say that it is comparatively satisfactory.

16 MR. POLLOCK: If you are measuring  
17 on the basis of strike records there is not  
18 that much difference between the number of  
19 strikes, in fact there may be more strikes  
20 occur if you count each one as one in  
21 Australia, than occur in Canada, but their  
22 duration is much, much curtailed. I think  
23 it is very difficult to measure the effectiveness  
24 of any system because of not having comparable  
25 standards. As you say, if the success of a  
26 system is the strike record, then you can say  
27 that the system that they employ in Russia  
28 is probably the most successful of all, they  
29 don't have any strikes, or in South America,  
30 or in Africa.





1 MR. WEILER: I realize that  
2 the aggregate of man-days lost is not the  
3 true test.

4 THE COMMISSIONER: You can  
5 have a strike in Australia lasting an hour  
6 but you take the situation as a whole from its  
7 social acceptability, it strikes me that so  
8 far it has succeeded. They have been with it  
9 now for 60 years and they would not change.  
10 I was reading just yesterday where one labour  
11 man declared that it would be ridiculous to  
12 try to modify materially that system today in  
13 Australia. Now, it may be that in the course  
14 of 10, 20, 25 or 30 years, they may be modified  
15 because they are getting a great deal of new  
16 industry from North America, chiefly from  
17 North America. It is hard to say what that  
18 impact may result in, but I don't think it  
19 would be fundamentally changed, that is, their  
20 system.

21 MR. WEILER: Do these  
22 administrative officers, for sake of a better  
23 word, have they developed a jurisprudence  
24 of their own?

25 THE COMMISSIONER: Yes, they  
26 have.

27 MR. WEILER: Has it been in  
28 basic principle very much opposed to the  
29 accepted legal principles of contract and  
30 behaviour?



1 THE COMMISSIONER: No, I wouldn't  
2 say that but their primary purpose is to deal  
3 with potential difficulties at their birth,  
4 not at their death.

5 MR. WEILER: And I agree whole-  
6 heartedly with that. You try to put the fire  
7 out as soon as it starts if it is at all  
8 possible.

9 THE COMMISSIONER: There is a  
10 certain intimate relation now between the  
11 parties there that bodes well, I would say,  
12 for its continuance. There is an easy access  
13 to the Department of Labour by labour leaders  
14 and even to the employers and there is that  
15 rapport that plays a tremendous part.

16 MR. WEILER: Are they able  
17 to attract competent men who are independent?

18 THE COMMISSIONER: I think the  
19 very fact of administering the office of a  
20 commissioner, say, has a tendency to objectivity  
21 and you will find in many cases where an  
22 employer will select a man who came up through  
23 the labour ranks and contrarily, the labour  
24 union, say, will select a man who came from  
25 business.

26 MR. POLLOCK: If they had  
27 a choice. They prefer the individuals. If  
28 you ask them who do you think is one of the  
29 better people, in many cases the employers  
30 will choose from the union ranks and say "He is





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1 pretty square".

2 THE COMMISSIONER: That is  
3 the result of what I would call a disciplined  
4 office and it depends upon the original  
5 capacity of the man, his power to divorce himself  
6 in a sense, from his prejudices or his early  
7 ideas, divorce himself from that when he is  
8 considering objectively a dispute between  
9 other people.

10 MR. WEILER: Just in closing,  
11 I am going to leave with you a copy of the  
12 Athens News of April the 14th, which indicates  
13 that other countries have their problems too.  
14 They do not have what I would consider is one  
15 of the more advanced Labour Relations Acts  
16 and certainly for procedures to try to get  
17 people to sit down and rationally reach an  
18 agreement, they do not have, apparently, so  
19 far as I can determine, the certification  
20 procedure and I believe they do not have  
21 anything analagous to our conciliation procedure  
22 but they have some form of an arbitration,  
23 some final determining body in the government  
24 which fixes rates. Well, of course, there is  
25 a certain amount of chafing and in this case,  
26 some of the building trades workers were unhappy ---

27 MR. POLLOCK: I might point out  
28 in background, as of today they don't even  
29 have the election process that we have here.

30 MR. WEILER: That has gone and



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1 that is a real tragedy because over there you  
2 had the feeling that people were able to express  
3 themselves very freely and they didn't hesitate.  
4 I talked to officials in the hotel and the  
5 bell boys and so on, to get their reactions.  
6 One thing that was common to them in connection  
7 with this matter was that they were not happy  
8 with the idea of force to prevent people from  
9 going to work. They said "They have got a  
10 perfect right to quit and they can act collectively"  
11 but they reacted against force and injuries  
12 being inflicted on what the people called  
13 strike breakers. They weren't strike breakers,  
14 they were people who continued to work and just  
15 for your own information, I thought that I  
16 would leave that with you.

17 MR. POLLOCK: Well, just  
18 turning for the moment to the suggestion that  
19 you make on page 24 with relation to the  
20 administrative body and the 6th suggestion  
21 relating to changing the legislative background  
22 in which the judges operate, you raise the  
23 objection in number 5 that the administrative  
24 body of the Provincial Government couldn't  
25 deal with the problems of federal industry.  
26 I think probably the same objection applies to  
27 number 6 in that the legislature couldn't  
28 legislate with relation to those.

29 MR. WEILER: When I spoke of  
30 of the  
legislatures I should have really spoken/legislature



1 and parliament because they are both going to  
2 have to lay down rules. Maybe they should  
3 be uniform as, for example, there is in this  
4 highway transport set-up. In that situation the  
5 federal parliament has, by statute, delegated  
6 the powers to the Ontario Board but the  
7 principles are uniform, there are no different  
8 principles with respect to federal licencing  
9 than there are with respect to provincial.

10 THE COMMISSIONER: You mentioned  
11 a good example of the incapability of the  
12 highest legal and judicial body to appreciate  
13 the necessities of administrative bodies  
14 because, you see, that legislation followed  
15 immediately upon the decision of the judicial  
16 committee that a bus line from Boston to  
17 Sydney, although organized and carried on  
18 for several years as simply a through line  
19 with through tickets and one thing and another,  
20 could extend that to the control of their  
21 routes in the city, that is, there was no  
22 limit to the expansion of their services  
23 local as well as through, and international,  
24 as they pleased. The Dominion Government  
25 got rid of it just as quickly as possible  
26 and I think there was a demonstration of  
27 where a political aspect was completely  
28 ignored and disregarded afterward. It was  
29 ignored by the court and their decision was  
30 disregarded immediately.





1 MR. WEILER: Well, perhaps if  
2 does not work entirely satisfactorily but  
3 maybe it is better than having two bodies  
4 acting independently and adopting different  
5 principles.

6 THE COMMISSIONER: Oh, no, I  
7 think the courts are always there to keep  
8 the subordinate body within the scope that  
9 the legislature has defined. That is always  
10 the case. You can't go beyond the jurisdiction.

11 MR. POLLOCK: Turning to the  
12 part of your submission relating to picketing  
13 and disputes which affect the public interest  
14 and in which you talk about secondary pressures  
15 on someone whom you describe as "innocent  
16 third parties to a dispute whose interests  
17 are harmfully affected because of an economic  
18 conflict which they themselves are powerless  
19 to settle", this is on page 9: I suppose  
20 that in this area you would exclude from the  
21 innocent people those parties who have an  
22 economic relationship with the area that is  
23 under primary dispute? The only shortcut  
24 I can take is - let us talk about the situation  
25 of Hersey in Woodstock. Assuming there was  
26 a strike at the original plant of Deacon  
27 Brothers, if the employees of Deacon Brothers  
28 also went to Hersey, which was a customer of  
29 Deacon Brothers and who was an agent for  
30 Deacon Brothers in selling Deacon Brothers clothing,



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1 and they said "Would you please not order any  
2 more clothes from Deacon Brothers during the  
3 currency of our labour dispute?" and he said  
4 "No, I am going to continue ordering and  
5 continue selling", well then, insofar as the  
6 United States practice is concerned, if the  
7 pickets were to picket that premises of Hersey  
8 and say to the customers of Hersey, "Don't buy  
9 Deacon Brothers clothes that are sold at Hersey,  
10 buy Warren K. Cook, or something like that",  
11 that is permissible, that is primary action.  
12 What is your view on that situation as opposed  
13 to that area where you put economic pressure  
14 against an individual because he has some  
15 very tenuous relationship with the primary  
16 dispute, such as the Heather Hill case in  
17 Toronto?

18 MR. WEILER: Mr. Pollock, I  
19 haven't thought my way through on that. I  
20 just don't know, it has troubled me because  
21 it strikes me that when you have a person  
22 not acting as an agent, but acting as a  
23 retailer and buying a quantity of goods in  
24 good faith, I don't see why - and he has got  
25 that in stock, I don't see why he should have  
26 any interference in the normal distribution  
27 of that through retail sales.

28 MR. POLLOCK: Suppose you  
29 eliminate that objection and say "You can sell  
30 what you have". Say he only has one suit left





1 and he is reordering a bunch of suits and they  
2 say "You sell your one suit and as soon as  
3 you sell that, don't order any more" so that  
4 you will avoid any of the actions that occurred  
5 before this man had any awareness of an  
6 industrial dispute.

7 MR. WEILER: I do not favour  
8 any spreading out of the activities beyond  
9 the immediate parties concerned because it  
10 is their dispute initially and I think that  
11 outsiders should not be hurt.

12 MR. POLLOCK: Well, just as  
13 a corollary of that, outsiders shouldn't assist  
14 one of the sides either. If it was not for  
15 the economic outlet that Hersey provided to  
16 Deacon Brothers, Deacon Brothers would not be  
17 able to operate.

18 MR. WEILER: You know, with  
19 advertising media that we have the fact that  
20 Deacon Brothers are in dispute with a union  
21 can be widely publicized and can be used in  
22 direct advertising to induce the public  
23 not to buy Deacon clothes.

24 MR. POLLOCK: Of course, that  
25 point-of-purchase advertising is still one of  
26 the most significant types of advertising used  
27 today. They still have the sign in the window  
28 that says "On sale such and such, come and buy  
29 this here", as opposed to just the advertising  
30 in the newspapers, so that all these pickets are



1 a point-of-purchase advertising against the  
2 purchase of this commodity.

3 MR. WEILER: As I say, I have  
4 not made up my mind but on the general principle  
5 I think I would have to view any extension  
6 of the influence of one of the parties to  
7 interfere with the operation of another, I  
8 think that should be restricted.

9 MR. POLLOCK: Would it ease  
10 the resolution of your problem any if this  
11 Hersey was a wholly-owned subsidiary of Deacon  
12 Brothers? If, for example we take Canadian  
13 Tire Corporation stores and there was a  
14 dispute with the manufacturing end of Canadian  
15 Tire to make certain tires. I don't think  
16 they make tires but assuming they do make tires  
17 and the dispute is with them in the manufacture  
18 of their tires, could you go and picket all of  
19 their Canadian Tire stores and say "Don't buy  
20 Canadian tires here, there is a dispute on"  
21 if it was the same close entity or some close  
22 relative?

23 MR. WEILER: Again, that is  
24 a retail outlet for the manufacturer, it is  
25 almost one. That is less objectionable.  
26 I don't see any reason why the union should  
27 not be able to publicize the fact that it has  
28 a dispute with somebody and try and induce  
29 the public, by lawful means, that is by inviting  
30 the public through advertising or other ways not



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1 to hurt the union and assist the employer by  
2 buying those products and the same way with  
3 my professional services, sir. If the Trades  
4 and Labour Council, because I happen to  
5 represent management on a number of occasions,  
6 should decide to tell the members, "Don't do  
7 business with Weiler", I can't do anything  
8 about it. I have no complaint. That is  
9 their privilege.

10 MR. POLLOCK: It is their  
11 folly, too?

12 MR. WEILER: I wouldn't say  
13 that, but on the other hand, I think it would  
14 be wrong for them to take steps to break any  
15 retainer that I might have.

16 MR. POLLOCK: It is all a question  
17 of degree, though, I suppose, economic  
18 relationship.

19 MR. WEILER: I suppose inducing  
20 a person not to support and to actively engage  
21 in attempts to breach contracts.

22 MR. POLLOCK: On the question  
23 raised on page 10, picketing after bargaining  
24 and conciliation, you suggest that in relation  
25 to a strike vote, the last offer of the employer  
26 should be voted on by secret ballot of persons  
27 in the bargaining unit. Two questions: First  
28 of all, how do you determine what is the last  
29 offer of the employer?

30 MR. WEILER: Well, the last in





1 time. I don't mean that it is an offer that  
2 would not ultimately be revised if it were  
3 rejected. I am not using it in that sense;  
4 I am using it as last in time, the most recent  
5 offer of the employer.

6 MR. POLLOCK: You have this  
7 administrative problem if you have a unit of  
8 employees larger than 20 or 30 or 50 that you  
9 can't communicate with them at all times. The  
10 employer makes an offer, you put it to a  
11 strike vote and say "Reject it, we are going  
12 out on strike" and then the employer says  
13 "I will give you ten cents more an hour",  
14 and then they have to put that to a vote  
15 again and they have to have dozens of votes.

16 MR. WEILER: Well, why not?  
17 Because theoretically, the members are  
18 controlling their destiny. I don't like this  
19 business of having a strike vote before you  
20 are finished with conciliation services and  
21 power delegated to the bargaining committee  
22 and the employees never have any say thereafter  
23 until they are embroiled in a strike.

24 MR. POLLOCK: Analagous to a  
25 delegation that comes from the shareholders  
26 of the company, I suppose, or the directorate  
27 to a negotiating committee and says: "All  
28 right, you can settle within this limit. Don't  
29 go any higher". The strike vote authorization  
30 given to the negotiating committee of the employees



1 should say, I suppose, in some circumstances,  
2 "We are going to try to get \$1.25. If we only  
3 get \$1.15, do you want to strike?" and they  
4 say "Yes, we want to strike unless we get \$1.25"  
5 and then the areas are clearly defined. They  
6 know if they get less than \$1.25 they are going  
7 to strike, they may not strike if they get  
8 \$1.23 but the area of authority is defined by  
9 this pre-strike vote. Otherwise, there is  
10 no certainty at all, you just keep going back  
11 and forth.

12 one  
13 MR. WEILER: It is /thing to vest  
14 them with power to make an agreement, for the  
15 union members to vest their committee with power  
16 to make an agreement; It is another thing  
17 for them to vest the bargaining committee with  
18 power to refuse to make an agreement.

19 MR. POLLOCK: That is a  
20 distinction I would like you to explore.

21 MR. WEILER: Well, you can  
22 very frequently set forth specific directions,  
23 an area in which a bargaining committee can  
24 settle and the same applies to management as  
25 well as to unions; in other words, a union  
26 might theoretically say, "If you can get a  
27 package that will add up to 36 cents in one  
28 way, shape or form, whether it is in money  
29 or benefits or otherwise, okay, take it". But  
30 before the bargaining committee should be  
able to stop a group of employees from working -





1 and they can effectively stop them from working  
2 by so-called calling a strike - then I think  
3 they should go back to the membership and  
4 honestly explain what - and repeat - what the  
5 employer has given as reasons and say, "Now,  
6 here is a new proposal. Will you tell us  
7 yes, or no?". I think they should have that  
8 power before their employment is interfered  
9 with and before they are exposed to suffering,  
10 damage and loss.

11 MR. POLLOCK: The only problem  
12 is it seems that this position ----

13 MR. WEILER: Sorry, sir, look  
14 in litigation, we have got to go back to our  
15 clients except when we have authority within  
16 a certain area, we have got to go back to our  
17 clients with revised offers to get specific  
18 authority before we can make a settlement  
19 and before we can say, in my view anyway, before  
20 we can say "There is no settlement, we are  
21 going to go on with the trial".

22 MR. POLLOCK: Before you say  
23 "I am going to accept on that basis", it must  
24 be in a definite area.

25 MR. WEILER: My view is that  
26 before I reject an offer I think I have an  
27 obligation to convey it to my client and  
28 get specific instructions before I precipitate  
29 him into a full fledged trial or even have  
30 the case go to a jury in the course of a trial.



1 MR. POLLOCK: The same obligation  
2 is on you to put the offer before you accept  
3 it on behalf of your client too.

4 MR. WEILER: Many times I  
5 have got authority, as you know you get authority  
6 within a certain area.

7 MR. POLLOCK: As long as you  
8 are in that area, but if you are not within  
9 that area, then you have to go back and ask  
10 the same thing.

11 MR. WEILER: There is no  
12 question about that, but it is when an offer  
13 is made, a counter-offer is made outside of  
14 that area and I haven't power I think I should  
15 not reject that offer out of hand and precipitate  
16 the client into a trial without giving him  
17 the opportunity to consider it.

18 MR. POLLOCK: You are presuming,  
19 of course, that the bargaining committee is not  
20 acting in the best interest by not accepting  
21 an offer offhand. Probably in a large number  
22 of cases the union negotiating committee is  
23 acting in the best interests of the employees  
24 of the union.

25 MR. WEILER: I think so,  
26 generally speaking, but there are situations  
27 where something has developed or there is a  
28 particular advantage to the union as an  
29 entity as contrasted with the employees.

30 MR. POLLOCK: The point you



1 appear to be making, at least the employer's  
2 point on this issue, you make it better than  
3 most people do, I must say, is that the union  
4 negotiating committee ought to be able to  
5 accept an agreement but ought not to be able  
6 to reject it.

7 MR. WEILER: Reject a reasonable  
8 proposal.

9 MR. POLLOCK: Well, how does  
10 that square with your concern earlier on in  
11 your agreement with the so-called sweetheart  
12 agreements where the union membership is not  
13 consulted and usually these agreements operate  
14 to the definite detriment of the employees  
15 affected? If the union negotiating committee  
16 can go and make any agreement with the  
17 employer, then their interests are not protected  
18 in those circumstances.

19 MR. WEILER: I don't like  
20 sweetheart agreements. I feel that there should  
21 be authority retained by the people who are  
22 directly affected. I know there are problems  
23 resulting from it but I think that, generally  
24 speaking, competent union representatives  
25 the same way as competent counsel, can get  
26 pretty clear instructions well ahead of an  
27 issue being joined.

28 MR. POLLOCK: The last point,  
29 I think, relates to the picketing, starting  
30 on the topic of mass picketing. You say there is





1 no reason for mass picketing except intimidation  
2 or threat of violence. Well, there is the  
3 position that is advanced on the basis of the  
4 popular support theory that if you have a  
5 number of people out there it looks like there  
6 are more people supporting this cause than if  
7 you have two or three people and also you  
8 avoid any possibility of people saying "You  
9 see those three fellows there, the union  
10 leaders, the general membership doesn't want  
11 this strike, it is those union leaders who  
12 are causing this thing; we are going to cross".  
13 I appreciate it is difficult to subtract the  
14 effect of numbers and the blocking of entrances  
15 but if we assume there is no blocking of  
16 entrance and we can assume that there are no  
17 physical threats of violence or anything and  
18 you just have more than three or four, you  
19 have 20 people marching up and down around  
20 there and every time a car comes up it opens  
21 up to let it go through - merely to give the  
22 mass support idea, is there any objection  
23 to that?

24 MR. WEILER: They open up just  
25 enough maybe to go through but the persons  
26 who maybe are in the car or in the truck are  
27 awfully close to the people on each side. Now  
28 what is the purpose of them being so close in?  
29 To exercise and influence through an implied  
30 threat is my view.



1 THE COMMISSIONER: That brings  
2 us to another question. What would you say to  
3 abolishing the picket line and the employment  
4 of strike breakers?

5 MR. WEILER: To abolish the  
6 picket line?

7 THE COMMISSIONER: And forbid  
8 the employment of strike breakers, confining  
9 the struggle to the two parties involved.

10 MR. WEILER: My view is, sir,  
11 that the picket line should not be abolished.  
12 I think that a picket line which is designed  
13 to let the news media focus their attention  
14 on the problem is good.

15 THE COMMISSIONER: But isn't  
16 it a fact that it is the picket line at which  
17 the disturbance to the peace of the community  
18 arises? Isn't that where the violence occurs?  
19 Isn't it where the substance of objection to  
20 these labour disputes originates?

21 MR. WEILER: Our experience  
22 up here, sir, in that respect, has been  
23 relatively good.

24 THE COMMISSIONER: But why,  
25 because relatively speaking you have large  
26 industries and a picket line is not necessary  
27 because the plant is closed.

28 MR. WEILER: We have a lot  
29 of small industries and there have been a lot  
30 of picket lines in the last 20 years since I have





1 | been around here doing some of this labour  
2 | work.

3 | THE COMMISSIONER: What is  
4 | the result, in the first place, of the strike?  
5 | Take any small industry.

6 | MR. WEILER: There is, number  
7 | one, the effect of the picket line certainly  
8 | to reduce the amount of business that the  
9 | company is doing. It might eliminate the  
10 | amount of business.

11 | THE COMMISSIONER: You have  
12 | had a number of them. Take one, one that  
13 | is significant. The strike took place. Was  
14 | it effective immediately in closing the plant?  
15 | That is, before there was any opportunity to  
16 | employ outside labour.

17 | MR. WEILER: I will use an  
18 | illustration of a garage strike that we had  
19 | here.

20 | THE COMMISSIONER: That is  
21 | pretty small, how many employees?

22 | MR. WEILER: Well, there were,  
23 | in some plants, 50 employees and all the  
24 | garages bargained together and all of them  
25 | were struck together.

26 | THE COMMISSIONER: Take an  
27 | industry that employs, say, 300 men. Have  
28 | you had anything of that sort?

29 | MR. WEILER: I don't think we  
30 | have had a lawful strike. The railway strike



1 last fall, which turned into an unlawful  
2 situation.

3 THE COMMISSIONER: But that  
4 closed the railway down?

5 MR. WEILER: That is right. I  
6 don't know that we have had any, I can't think  
7 off-hand of any lawful strikes involving that  
8 large a number of people, but there have been  
9 quite a number of strikes. I am talking about  
10 that number of people at an individual plant.  
11 In the garage situation there were more than  
12 that number of people affected.

13 THE COMMISSIONER: Was there  
14 a strike of all the garages?

15 MR. WEILER: All of the garages  
16 in the two cities.

17 THE COMMISSIONER: What  
18 happened?

19 MR. WEILER: The service  
20 end of the garages were largely curtailed.  
21 Some of the supervisory staff did some emergency  
22 work, some gas was sold and some car sales  
23 went on but the shops, generally speaking,  
24 were closed down.

25 THE COMMISSIONER: How long  
26 did the strike continue?

27 MR. WEILER: The most recent  
28 one only lasted a few days.

29 THE COMMISSIONER: In the  
30 meantime, were you in a position to engage



1 outside help? Was there help available? Take  
2 in the shops where you must have certain skills.

3 MR. WEILER: The work was  
4 crowded in many cases into some service station  
5 set-ups with one or two mechanics who were  
6 not under collective agreements, owner-operated  
7 affairs.

8 THE COMMISSIONER: Would you  
9 say that in substance the work was more or  
10 less brought to a cessation?

11 MR. WEILER: I think the work  
12 substantially came to an end except for emergency  
13 work.

14 THE COMMISSIONER: And the  
15 employers could not then continue too long  
16 to lose money at that rate.

17 MR. WEILER: That is right.

18 THE COMMISSIONER: And to  
19 what extent did the picket line contribute  
20 to that?

21 MR. WEILER: Well, it contributed  
22 to it to this extent. Number one, it had the  
23 effect of occupying the employees who were in  
24 the bargaining unit.

25 THE COMMISSIONER: Occupying  
26 them in what way?

27 MR. WEILER: They would be  
28 rotating on the picket line. There would be  
29 maybe six pickets in a shop with 25 employees.

30 THE COMMISSIONER: I suppose they





1 could have been at home or in the union hall  
2 just as easily?

3 MR. WEILER: That is true and  
4 then, in addition, I think it had the effect  
5 of inducing many people not to go in because  
6 of the matter of public relations. You take  
7 a lot of business people, and maybe professional  
8 people, would maybe be reticent about going in.

9 THE COMMISSIONER: But if they  
10 didn't, they might not get gasoline but they  
11 did get gasoline, didn't they?

12 MR. WEILER: Well, I say I  
13 think the sales of gasoline were down substantially  
14 but they weren't shut down completely.

15 THE COMMISSIONER: Were the  
16 private automobiles shut down?

17 MR. WEILER: Of the general  
18 public, no.

19 THE COMMISSIONER: Why, if there  
20 was a strike on?

21 MR. WEILER: Because there were  
22 sufficient other places offering similar services  
23 both through gas and oil and through mechanical  
24 services.

25 THE COMMISSIONER: So it was  
26 just transferred from the whole group to one  
27 section?

28 MR. WEILER: That is right, but  
29 my point is that it didn't shut down completely  
30 the garages that were affected but it definitely



1 inflicted an economic harm on them and the  
2 picketing was carried on peaceably and really,  
3 from my point of view, there was no objection  
4 to that. I think that was a proper way of  
5 focussing/the attention of the public on the  
6 problem.

7 THE COMMISSIONER: You don't  
8 think, then, that engaging new help is feasible  
9 in the ordinary run of a strike?

10 MR. WEILER: In many cases it  
11 is not, but there are situations where employees  
12 do not want to go on strike.

13 THE COMMISSIONER: I am not  
14 talking about those men, I am talking about  
15 outside men. You know, you are familiar  
16 with the difference between a scab, say, and  
17 a strike breaker. A scab is a member of a  
18 union on strike and he goes back but the  
19 strike breaker comes in from the outside.

20 MR. POLLOCK: He has never been  
21 an employee.

22 MR. WEILER: We don't, in this  
23 area, have too many situations in anything  
24 other than small plants involving maybe less  
25 than 15 employees. In those situations men  
26 have found the jobs attractive and have gone  
27 in and filled the jobs.

28 THE COMMISSIONER: Outsiders?

29 MR. WEILER: Outsiders.

30 THE COMMISSIONER: Were they





1 brought in permanently or temporarily?

2 MR. WEILER: In one instance  
3 I have in mind, the men remained on the job  
4 because the strike failed.

5 THE COMMISSIONER: Do you  
6 think that that was a desirable end there  
7 because of the small number and they could  
8 be replaced?

9 MR. WEILER: Well, it pointed  
10 up this: That in my opinion, the union was  
11 unrealistic.

12 THE COMMISSIONER: In what way?

13 MR. WEILER: In its demands  
14 and precipitated its men into a strike situation  
15 where it was not justified and the jobs were  
16 attractive enough to other people.

17 MR. POLLOCK: At the old rate?

18 MR. WEILER: At the old rates  
19 or the improved rates.

20 THE COMMISSIONER: What do you  
21 mean by that?

22 MR. WEILER: In the course of  
23 negotiations there were improved rates offered  
24 and those were attractive enough to bring  
25 other people to work.

26 THE COMMISSIONER: Surely the  
27 union men knew that when they went on strike.  
28 Couldn't they have anticipated it?

29 MR. WEILER: They could have  
30 anticipated it but they were, I think, misled.



1 MR. POLLOCK: Well, they misgauged  
2 their strength, that is all.

3 MR. WEILER: That is right.

4 THE COMMISSIONER: They surely  
5 must be familiar with the immediate surroundings  
6 and as to whether or not they could be replaced  
7 by outside people. Surely they would recognize  
8 that.

9 MR. WEILER: That is not so  
10 easy where you have 100 thousand people and  
11 you need 8 or 10 employees.

12 THE COMMISSIONER: You are  
13 speaking about the cities here?

14 MR. WEILER: Yes. There has  
15 been quite a competition for jobs.

16 THE COMMISSIONER: Take a  
17 larger case where you have 300 or 400 people  
18 working and there is some degree of skill,  
19 that is the first thing. Do you think they  
20 can be replaced?

21 MR. WEILER: No, there is not  
22 a supply of labour in this part of the province  
23 which will provide a working force.

24 THE COMMISSIONER: Then the  
25 strike achieves its object, it closes the plant  
26 in effect.

27 MR. WEILER: Quite effectively.

28 THE COMMISSIONER: So there is  
29 no need of a picket line.

30 MR. WEILER: No need for the



1 purposes of ceasing operations.

2 THE COMMISSIONER: Achieving  
3 the object of closing the plant, that is the  
4 most they can have as the object, isn't it?

5 MR. WEILER: Sir, I feel that  
6 the presence of a picket line with the  
7 publicity that flows from it - we pick up our  
8 newspapers because on the front page every  
9 time there is a strike there is a story about it.  
10 I don't know whether the story is written by  
11 the union or whether it is written by the employers  
12 but the fact of the matter is that the people  
13 follow the course of the strike on the front  
14 page of the paper and on the television.

15 THE COMMISSIONER: It is blown  
16 up to a great extent, isn't it? It becomes  
17 a whole community affair.

18 MR. WEILER: That is right.

19 THE COMMISSIONER: Is that a  
20 desirable thing?

21 MR. WEILER: Yes, I think it  
22 is desirable. I think it is desirable for  
23 the general public to know. I will tell you  
24 there are situations sometimes where persons  
25 are underpaid and it helps to ----

26 THE COMMISSIONER: We are  
27 assuming that the strike has succeeded in closing  
28 the plant.

29 MR. WEILER: That is right.  
30 Now, the plant remains closed and there are no





*Nethercut & Young**Toronto, Ontario*

1 replacements offered because the rates are not  
2 attractive enough to bring other people in.

3 THE COMMISSIONER: Not only that  
4 but the union is consolidated, it holdstogether.  
5 None of those men will go back, the work is  
6 stopped. Why interfere with that?

7 MR. WEILER: I don't think that  
8 picketing interferes with it; I think it merely  
9 publicizes it.

10 THE COMMISSIONER: Well, if it  
11 doesn't interfere and it is only for the publicity  
12 of it, why go to the trouble of stirring up  
13 people unnecessarily, because hatreds are generated  
14 in these matters which may divide families?

15 MR. WEILER: It works both ways,  
16 sir. You take sometimes, for example, in a  
17 municipal field where a union providing a  
18 relatively essential service but not particularly  
19 skilled type of work is required, sometimes the  
20 demands are pretty excessive. The union has  
21 a picket line and concurrently with that publicity  
22 that comes about through the picket line, the  
23 employer has, on occasion, publicized, not by  
24 name, but by number, the annual earnings of  
25 these people and it has had quite a salutary  
26 effect in one situation.

27 THE COMMISSIONER: They didn't  
28 do that on the picket line; they did it in the  
29 newspapers?

30 MR. WEILER: That is true.



1 THE COMMISSIONER: Well, that  
2 is the place for it because it will reach  
3 10, 20, 30 times the people that an individual  
4 location will.

5 MR. WEILER: It is assumed,  
6 though, that the workers and the union do not  
7 have sufficient funds to carry on a costly  
8 advertising campaign.

9 THE COMMISSIONER: That is  
10 true ----

11 MR. WEILER: And picketing is  
12 a way to get free advertising.

13 THE COMMISSIONER: Do you  
14 think there is any ignorance of people who  
15 were interested in the strike of the existence  
16 of the strike?

17 MR. WEILER: Oh, I think there  
18 is quite a segment of the people who are  
19 interested in the strike ----

20 THE COMMISSIONER: Then they  
21 know about it?

22 MR. WEILER: They know of the  
23 existence.

24 THE COMMISSIONER: Because I  
25 think it comes into the newspapers as a matter  
26 of news, not as advertisement.

27 MR. WEILER: The news, though,  
28 sir, becomes in my opinion, free advertising  
29 to the union.

30 THE COMMISSIONER: I don't care





*Toronto, Ontario*

1        what you call it, it communicates the fact  
2        that there is a strike.

3                    MR. WEILER:        A photograph of  
4        half a dozen pickets walking up and down a  
5        block, sometimes the picket signs are  
6        colourful, you know.

7                    THE COMMISSIONER:        What you  
8        are arguing for is a colourful society.

9                    MR. WEILER:        I am not inclined  
10       to take away, I don't subscribe to the view  
11       that workers should be deprived of an  
12       opportunity of adequately expressing themselves  
13       and carrying their case to the public for  
14       what it is worth.

15                   THE COMMISSIONER:        I don't either,  
16       in this argument I am assuming that they have  
17       all the means except the one that leads to  
18       trouble and the more pickets you have, the  
19       more effectiveness that your point is given,  
20       the more danger of violence and the more  
21       frequently the result is violence.

22                   MR. WEILER:        Picketing, sir,  
23       per se, I don't think necessarily implies  
24       violence but when you get too many, then it  
25       is an abusive thing.

26                   THE COMMISSIONER:        The labour  
27       men will tell you that what they want to do is  
28       to make the demonstration at the critical  
29       moment which is the first moment:       everything  
30       is whipped up to generate that fiery spirit,



1 that incensed spirit at times, at that moment  
2 they want to impress everybody - their own  
3 men, other men, the public and the employers.

4 MR. WEILER: Well, that is a  
5 sort of a type of salesmanship. I am hardly  
6 in a position to sit in judgment against that  
7 so long as they behave themselves.

8 THE COMMISSIONER: That is  
9 the point. When you ask them why they don't,  
10 one man says, and I don't think very honestly,  
11 he says "It is human nature".

12 MR. WEILER: There are unions  
13 with responsible people who are very careful  
14 about controlling the behaviour of their  
15 pickets.

16 THE COMMISSIONER: Well, they  
17 seem to have a genius in keeping out of sight  
18 because we haven't had many evidences of that.

19 MR. WEILER: We have had, in  
20 the last two or three or four years a change  
21 of attitude in some parts of the east. I am  
22 unhappy about it and a lot of people I talk  
23 to are because it just doesn't sit right.

24 THE COMMISSIONER: Perhaps I  
25 misunderstood what you said. I understood  
26 you to say that the unions were taking now  
27 steps that eliminated all these questions.

28 MR. WEILER: Some unions  
29 are very strict with the type of picketing  
30 that is permitted.



1 THE COMMISSIONER: Name some.

2 What unions have you in mind which have actually  
3 maintained in large numbers without injunctions  
4 peaceful picketing, in the sense of being  
5 present and notifying the public?

6 MR. WEILER: You have put in  
7 another factor there, sir. You put in the  
8 factor of picketing in large numbers. I  
9 don't agree with that. I subscribe to the  
10 view that you could have picketing with a  
11 token group of picketers who will effectively  
12 convey to the general public the information  
13 that there is a strike. Now, that is the type  
14 of picketing that I think the union should  
15 not be deprived from having.

16 THE COMMISSIONER: In the first  
17 place you have that in a zone where industry  
18 is proscribed. How many members of the public  
19 have occasion, except the workers, to go into  
20 that section or district every day where  
21 this would be noticeable and effective in its  
22 notice?

23 MR. WEILER: I say, sir, and  
24 I have made this point in my brief, that the  
25 presence of a token picket force is all that  
26 is needed because the news media do the rest  
27 for them, and you don't have to have a whole  
28 great big group in that location.

29 THE COMMISSIONER: Then you  
30 don't mean to say that the presence of the





1 picket line itself is the advertising agency  
2 that you think desirable, in its own effect,  
3 but in its effect on collateral media.

4 MR. WEILER: That is correct,  
5 sir, it is not the media that disseminates  
6 the news of the strike: It merely provides  
7 the signs which other people read, not directly  
8 on the street, but through the other media,  
9 through television and newspapers and whenever  
10 there is a strike here, sir, I can tell you  
11 this, within 24 hours on the front page of  
12 the papers, there is a photograph of the picket  
13 line and that is how I think the information  
14 concerning the existence of a strike is  
15 conveyed to the general public peacefully.

16 THE COMMISSIONER: Well, this  
17 could be done by one man at that plant.

18 MR. WEILER: Maybe one is  
19 adequate. All I am saying is that even one  
20 man carrying a sign is a picketer.

21 THE COMMISSIONER: Then I  
22 think all you have to do is to send a notice  
23 to the media, they are all anxious for  
24 something to fill in the columns or the  
25 time of the reporters.

26 MR. WEILER: It is not as  
27 effective as a picture, in my opinion, sir.

28 Well, thank you for listening  
29 to me. I am sorry I have occupied your time  
30 all morning.



1 THE COMMISSIONER: Thank you  
2 for taking the trouble to try to give us  
3 some answers.

4 I am sorry, Mr. Pollock has  
5 a couple more questions.

6 MR. POLLOCK: There are a  
7 couple more questions that arise out of your  
8 brief and one of the questions relates to  
9 what we have been discussing, the limitation  
10 of action between the two parties, why is  
11 the employer intent in bringing in these  
12 outside people by either contracting out  
13 work or bringing in other employees? I  
14 think we have dealt with that and you think  
15 it is an economic question that the employer  
16 ought to be able to use the persuasiveness  
17 of what economic offers he is making to the  
18 union and he should be able to attract other  
19 people onto the same premises and that is  
20 the test of its reasonableness.

21 MR. WEILER: That is right.  
22 I gave you an illustration of the situation  
23 where they would<sup>n't</sup> go on strike but there was  
24 a picket line set up and followed by a  
25 secondary boycott.

26 THE COMMISSIONER: I was thinking  
27 that a picket line was an incident of a strike.  
28 If there is not strike, how can you have an  
29 incident?

30 MR. WEILER: Well, a union calls





Toronto, Ontario

1 a strike, they declare that there is a state  
2 of war on.

3 THE COMMISSIONER: And nobody  
4 goes out?

5 MR. WEILER: And the employees  
6 don't go out. It was effectively done.  
7 They hired the new boys - unemployed members  
8 from the wine gang were principally engaged  
9 to carry the signs when the employees wouldn't  
10 go out on strike.

11 MR. POLLOCK: What is the wine  
12 gang?

13 MR. WEILER: We have a fringe  
14 here that is addicted to the catawba now and  
15 then. They are down on the water front.

16 MR. POLLOCK: Inebriates?

17 MR. WEILER: Yes, they don't  
18 hold steady jobs.

19 MR. POLLOCK: On page 16 you  
20 talk about the difficulty encountered in  
21 the construction of a shopping centre or a  
22 dispute with a gas company, quite a lawful  
23 dispute and the employees of the gas company  
24 are on strike and they picket the premises  
25 having the effect that other people don't  
26 cross those lines. Is there any objection  
27 on the part of a contractor, on the balance  
28 of convenience, removing these pickets so  
29 that other trades will cross, that the gas  
30 part of the project not continue?



1                   MR. WEILER:   In the illustration  
2                   which I gave, which is a concrete illustration,  
3                   the only relationship between the shopping  
4                   centre and the gas company at that stage, the  
5                   gas having been installed, was the supply of  
6                   gas through the pipe underground. Now, the  
7                   unions did not cross the picket line to go  
8                   to work.   Some of the union leaders said  
9                   "Look, get the pickets off there and we will  
10                  go to work" and the same thing happens on  
11                  the water front.   A ship comes in and there  
12                  was a union, you know, that at one stage was  
13                  going to keep anybody else off these Great  
14                  Lakes except ships that were manned by that  
15                  particular union.

16                 MR. POLLOCK:   I think both of  
17                  those unions were guilty of that at one time,  
18                  both C.M.U. and the S.I.U., depending on the  
19                  chronology of your history.   The S.I.U. were  
20                  brought in, ostensibly to combat the C.M.U.  
21                  at one stage.

22                 MR. WEILER:   Oh, no, sir, your  
23                  history is a little off.   The S.I.U. was  
24                  brought in to combat that original union,  
25                  that was not the C.M.U., the C.M.U. is a  
26                  more recent agreement set up by the C.L.C.  
27                  The other one was the Canadian Seamen's Union  
28                  that preceded the S.I.U., but the boast was  
29                  made by some members of the S.I.U., here, that  
30                  there were not going to be any boats out of the



1 Great Lakes which didn't have collective  
2 agreements with their union and then a token  
3 picket line goes down and walks up and down  
4 in front of the entrance to the elevator, a  
5 thousand feet from the ship, but the stevedores,  
6 the grain trimmers, don't go past the picket  
7 line, they are members of another union so the  
8 ship lies idle.

9 THE COMMISSIONER: Is that a  
10 desirability in that situation?

11 MR. WEILER: It is highly  
12 undesirable.

13 THE COMMISSIONER: Well, why  
14 not remove the picket line?

15 MR. WEILER: That is why I  
16 say the picket line was an unlawful picket  
17 line, it had no contractual relations whatsoever,  
18 they had no right to any collective action  
19 against the ship owner or the elevator. And  
20 the grain trimmers said to us "Get the pickets  
21 off, we want to load that ship. Get the  
22 pickets off and we will load the ship tonight".  
23 We got it off.

24 MR. POLLOCK: Assuming there  
25 is a dispute, a lawful dispute between the  
26 seafarers and the shipping company and they  
27 withdraw their services from this ship and  
28 they picket the ship and the grain trimmers  
29 want to go and work on the ship and they  
30 don't want to cross the picket line, one of





1 the main purposes of the seafarers pickets is  
2 to prevent other seamen from going across  
3 those pickets, isn't it? That is one of  
4 their concerns. If they don't get other  
5 seamen across, they aren't going to sail that  
6 ship no matter whether it is loaded today or  
7 next week.

8 MR. WEILER: That is right.

9 MR. POLLOCK: So that if the  
10 employer really only wants to get the grain  
11 trimmers in to load his ship, then he will  
12 do that by eliminating the picket line, but  
13 if his real purpose is to eliminate the  
14 picket line and get other employees to replace  
15 the striking employees, then that is where the  
16 conflict comes in.

17 MR. WEILER: I am not at all  
18 sure that an injunction could be obtained to  
19 remove a picket line in that situation.

20 MR. POLLOCK: They do it all  
21 the time in construction areas. You take a  
22 site where the plasterers are on strike, lawfully  
23 on strike, and the electrical sub-contractor,  
24 his employees don't come to work. Well, he  
25 goes and gets an injunction against those  
26 employees because they are inducing breach of  
27 contract between the electrical employees and  
28 the electrical sub-contractor. He says "I have  
29 nothing to do with these things, I am having  
30 happy relations with my employees, please give



1 me an injunction", and they give him an  
2 injunction and this prohibits these plasterers  
3 from picketing their project. Not only does  
4 it remove them completely from the project  
5 as far as these electrical people are concerned,  
6 it removes them from the projects so far as  
7 the plasterer, who had a legitimate strike  
8 on his hands, is concerned. He is now free  
9 to engage other plasterers. The unions  
10 complain, they say "All right if you are going  
11 to take away the picketing on this project,  
12 at least give us the guarantee that under this  
13 subterfuge you are not going to be able to  
14 employ other people to do the job that we were  
15 originally doing and are now in lawful strike  
16 in relation to".

17 MR. WEILER: I have never  
18 applied for an injunction in that situation.

19 MR. POLLOCK: Well, you would  
20 not quarrel with that principle that if that  
21 is the case, if you are going to balance the  
22 "innocent" contractor against the union that  
23 is lawfully on strike, then you have to give  
24 something to the union that is lawfully on  
25 strike against his employer.

26 MR. WEILER: That doesn't sound  
27 unreasonable to me.

28 MR. POLLOCK: So, if you remove  
29 the picket line in that case, it appears it  
30 would be all right with you that the person



1 with whom the strike is in effect, can't employ  
2 alternate personnel.

3 THE COMMISSIONER: If you  
4 destroy the picket line, he should not be  
5 permitted to destroy the strike.

6 MR. WEILER: That seems reasonable  
7 to me. I might have to eat those words  
8 sometime.

9 MR. POLLOCK: We are still  
10 going into the recipe, we have not baked the  
11 cake yet.

12 Now, the last point is the  
13 question about the injunction. In your  
14 submission you say that as long as the order  
15 is accurately made and narrowly drawn to  
16 prohibit in the future only conduct which  
17 is illegal in fact, then there is no effect  
18 of the injunction. As long as it doesn't  
19 say "You / : do any violence" or "shan't do  
20 any of these other things - intimidation,  
21 blocking of entrances," nobody is affected by  
22 that, nobody's legitimate interest is  
23 affected by that.

24 MR. WEILER: That is right.

25 MR. POLLOCK: The only point  
26 I make is that most injunctions say "All right,  
27 you are limited to two pickets per gate". Now  
28 that continues on and on and on, whether five  
29 pickets would be better at some time than two,  
30 because five pickets doesn't amount to mass







1 picketing, ten pickets isn't even mass picketing,  
2 e v e n 20 pickets. 500 or 1,000, we are in  
3 a different degree.

4 MR. WEILER: The fact that  
5 they spell out a number is a limit or a guide  
6 and rather than leaving it in purely general  
7 terms which will only maybe create another  
8 problem.

9 MR. POLLOCK: It is not a  
10 guide, though, it is a rule, there is  
11 rigidity in it. It says "You can't have any  
12 more than two pickets". I agree with you  
13 that clearly they are enjoined against all  
14 these violent acts and all these other things  
15 and there is no quarrel with that and what  
16 you say is perfectly correct with regard to  
17 that, but this other effect of the limitation  
18 of pickets may, in effect, reduce the effectiveness  
19 at all of the picket line in all respects.

20 MR. WEILER: That only occurs  
21 where there has, in fact, been violence.

22 MR. POLLOCK: All right,  
23 so you get the injunction against the violence  
24 and you still may have - why not allow them to  
25 still have 10, 12, 15 pickets?

26 MR. WEILER: It seems to me that  
27 there should not be any objection to some  
28 reasonable standards being set out in the order.  
29 Now, whether one, two, five or ten is the number  
30 would depend on the particular case but I think



1       that the judge has good enough sense that he  
2       can decide reasonably, what should be the  
3       number.

4                   THE COMMISSIONER:     That name  
5       occurs to me - Lord Justice Strutton, who  
6       was the man in this country who gave an  
7       address in which he emphasized the fact that  
8       the mental structure of a lawyer had been  
9       so affected by his education, by his training  
10      and by his associations with men of the same  
11      interest that he was scarcely in a position  
12      to judge of a situation which contained  
13      elements with which he was not acquainted.

14                  MR. WEILER:     I think there is  
15      an element of truth in that but I think in  
16      our country here that does not prevail to the  
17      same extent, sir, because in the north here,  
18      I will meet some of the fellows out on the  
19      golf course that I sit across the table from -  
20      operating engineers, business agents - and we  
21      will shake hands and we may pass the time  
22      away and twit ourselves about a particular  
23      problem we have.

24                  THE COMMISSIONER:     That is so,  
25      but the ordinary labour man does not accept  
26      that view. He says "We have evidence that  
27      they are acting in the same way here as they  
28      do in England" but I agree with you, conditions  
29      are not identical at all, they are not sufficiently  
30      similar.



1 MR. WEILER: The economics  
2 of the situation brings us down to doing, for  
3 example, work that the ordinary workman does  
4 and a lot of that work, under the pressure  
5 of one's wife, and other things.

6 MR. POLLOCK: Thank you very  
7 much, Mr. Weiler, you have been of considerable  
8 assistance to us in the preparation of your  
9 submission.

10 MR. WEILER: Thank you, sir.

11 MR. POLLOCK: It is now 15  
12 minutes after 12:00. I call the Dryden  
13 and District Labour Council.

14 I call the Fort William  
15 Typographical Union, Local No. 417.

16 I call the Port Arthur-Fort  
17 William and District Labour Council.

18 No answer, the Hearings are  
19 adjourned until 1:30.

20 ---Adjournment until 1:30 p.m.  
21  
22  
23  
24  
25  
26  
27  
28  
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30





1 ---On resuming at 1:30 p.m.

2 MR. POLLOCK: I call the  
3 Dryden and District Labour Council. (No answer.)

4 I call the Fort William  
5 Typographical Union, Local No. 417. (No answer.)

6 I call the Fort William-Port  
7 Arthur and District Labour Council, Mr.  
8 Norman Richard.

9 Mr. Richard, we have just  
10 received your brief. Perhaps you might care  
11 to read it and we can discuss some aspects  
12 of it.

13 MR. RICHARD: Submission by  
14 the Fort William-Port Arthur and District  
15 Labour Council to Royal Commission Inquiry  
16 into Labour Disputes, Commissioner Honourable  
17 Ivan C. Rand, L.L.D.

18 Honourable Sir: Our Labour  
19 Council, chartered by the Canadian Labour  
20 Congress, has fifty affiliated unions,  
21 representing some ten thousand members in the  
22 cities of Fort William and Port Arthur and  
23 the immediate surrounding area. We are  
24 affiliated to the Ontario Federation of Labour.

25 The Fort William-Port Arthur  
26 and District Labour Council has, if I may  
27 put in, by a resolution at regular meeting,  
28 approved the submission made to this Commission  
29 by the Ontario Federation of Labour in  
30 December, 1966.



1                    Rather than re-stating many of  
2 the matters that the Federation has already  
3 presented, we shall confine ourselves to one  
4 item for your consideration. This is a matter  
5 concerning this area of Ontario.

6                    In a number of labour disputes  
7 in Northwestern Ontario over the past few  
8 years, ex parte injunctions, restraining or  
9 removing pickets, have been issued by  
10 District Court Judges. Hearings on these  
11 injunctions are held and the final decision  
12 is made in Toronto.

13                   In many cases, unions from  
14 these outlying portions of Ontario, have  
15 not appeared at the Supreme Court hearing in  
16 Toronto for a number of reasons. These include  
17 distance, high costs and even lack of public  
18 or private means of transportation, and  
19 communication. This default on the part of  
20 unions, we feel, could affect any final  
21 decision by the Supreme Court.

22                   The Fort William-Port Arthur  
23 and District Labour Council wishes to thank  
24 this Commission for the opportunity of making  
25 this brief submission and hopes that due  
26 consideration will be given to the problem  
27 that we have raised.

28                   All of which is respectfully  
29 submitted. Norman E. Richard, General Secretary.

30                   Mr. Chairman, if there are any



1 questions on that, I have known of a few cases,  
2 especially in the smaller unions, where these  
3 have affected it.

4 MR. POLLOCK: Could you tell  
5 us some of those particular cases? First of  
6 all, by way of general comment, have there  
7 been any injunctions issued in this area on  
8 notice in which the union has participated  
9 and sought to challenge the evidence that  
10 has been submitted and put in evidence of its  
11 own?

12 MR. RICHARD: There have been  
13 cases, but usually most of the unions in this  
14 district are pretty much on their own and  
15 do not get any extreme amount of service  
16 from their national offices that would be  
17 available in the immediate vicinity of Toronto  
18 and places of that kind. The one I can recall  
19 to mind was a small local about a year and a  
20 half ago, who were on strike, injunctions  
21 were issued locally, they were through the  
22 Canadian Labour Congress who footed the bill,  
23 made a presentation in Osgoode Hall, I believe,  
24 and the terms of the injunction were lifted.  
25 This concerned the gas strike which was on  
26 here about a year ago last October.

27 MR. POLLOCK: What was the basis  
28 of the injunction in issuing it?

29 MR. RICHARD: In this case,  
30 as I recall, an installation was done in a major







*Toronto, Ontario*

1 building, I think it was the Centennial Square  
2 Project in Fort William.

3 MR. POLLOCK: Is that a shopping  
4 centre?

5 MR. RICHARD: Yes. They had  
6 made an installation prior to a long weekend  
7 holiday. I believe it was Thanksgiving day,  
8 there was still some work to be completed,  
9 they went on strike the next day and others  
10 went in and completed the job. This is  
11 the story. The terms of it removed the  
12 pickets but as I can recall, the order, the  
13 final order on it, the pickets were removed  
14 until such time as the company resumed work  
15 on the project. Well, this was done and  
16 shortly after the whole matter was resolved  
17 and I can say that they reached a settlement  
18 shortly after the decision in Osgoode Hall.

19 MR. POLLOCK: In other words,  
20 so long as the company did not proceed with  
21 the construction and the work on the project,  
22 the injunction continued.

23 MR. RICHARD: Yes, the court  
24 restrained the company from doing it but in  
25 the process of the time between the issue of  
26 the order in Toronto and the receipt of it here,  
27 the company had gone in and done some work  
28 so this put it wide open when the order came  
29 through. There was rather an awful lot of  
30 confusion, I can say, because this thing



1 bounced back on them. This is one case where  
2 an injunction actually bounced. It is one  
3 of the few and rare occasions.

4 On the other matter of distance,  
5 the smaller locals - we have a number of them,  
6 in our own labour council we have 60 affiliates,  
7 the largest one will run to about a thousand  
8 members, but we have lots of them that are  
9 15 and 20 member locals and as you can see  
10 in this matter, it is really a tough project  
11 for a small local of that nature to send  
12 witnesses or anything to Toronto for a hearing  
13 on this matter.

14 MR. POLLOCK: Would they be  
15 able to send witnesses to appear at the  
16 hearing in Port Arthur?

17 MR. RICHARD: A good portion  
18 of them are here. Out of this area there  
19 are 60 affiliated to us. I would say there  
20 are about 70 local unions in this area, in  
21 the immediate surroundings, that is not  
22 going into the far west of Ontario, but  
23 within 50 miles, I would say within a radius  
24 of 25 miles of here.

25 MR. POLLOCK: If the original  
26 application, which is made by the company  
27 is to the court in Port Arthur, then the  
28 union would be able to appear in Port Arthur?

29 MR. RICHARD: This is right.  
30 There are three district judges here, I believe,



*Nethercut & Young**Toronto, Ontario*

1 who look after the area. There are two stationed  
2 here, I believe, there is one in Kenora and  
3 there is one in Ft. Francis. This puts a  
4 judge which would be on a hearing within 160  
5 miles, within, I would say, 150 to 200 miles,  
6 there would be one available.

7 Another problem, as I mentioned  
8 here on the transportation, you could throw  
9 out Canadian Pacific practically. If you've  
10 got 3 days or 4 days or 9 days, or whatever  
11 it is trying to get a ticket on the Canadian  
12 is like pulling teeth from a hen, I guess.  
13 We have bounced into it and sometimes in peak  
14 periods, T.C.A., which is the other outlet,  
15 is rather packed and under extreme conditions  
16 you still have Greyhound now, but it is not  
17 a first class standard of transportation.

18 THE COMMISSIONER: What about  
19 the C.N.R.?

20 MR. RICHARD: To go to Toronto  
21 by the C.N.R., Your Honour, is very difficult.  
22 You leave here the night before on Greyhound,  
23 stop over at Longlac until the next morning  
24 and then come through on the Supercontinental.  
25 It is an outlandish way. Actually, the C.P.R.,  
26 Canadian and T.C.A. are the only outlets to  
27 Toronto and if either one of them is plugged,  
28 it creates a problem.

29 MR. POLLOCK: There are  
30 occasions when you can't get day coach accommodation







1 on the C.P.R.?

2 MR. RICHARD: It is really  
3 rough, sometimes, and when an order is issued  
4 it has got to get there. If you need 3 or 4  
5 witnesses to go down, perhaps one could make it  
6 it but it is really rough this way.

7 MR. POLLOCK: Do you have  
8 any figures as to how many ex parte injunctions  
9 have been issued in the last, say, 10 years?

10 MR. RICHARD: Offhand, I would  
11 not want to fathom a guess, especially in  
12 the construction trades which I am not too  
13 familiar with but within the last year and  
14 a half, I would know of some half-dozen.

15 MR. POLLOCK: There are on  
16 record in the recent study conducted by Professor  
17 Carrothers on labour injunctions, from 1958  
18 to 1966, a total of 10 injunctions issued  
19 in the district of Thunder Bay, so that based  
20 on what you have just said about knowing of  
21 half a dozen in the last year or so, there  
22 must have been considerable that are not  
23 reported in this study, or the other conclusion  
24 might be that your figures are incorrect.

25 MR. RICHARD: As I say, the  
26 two definite ones that I personally know about  
27 were the gas strike about a year and a half  
28 ago and last year was a brewery strike. I  
29 think in the gas strike there were 3 injunctions  
30 issued, if I recall properly.



1 MR. POLLOCK: Who was the  
2 company?

3 MR. RICHARD: Twin City Gas.

4 MR. POLLOCK: And what year  
5 was that?

6 MR. RICHARD: A year ago  
7 last October, I believe.

8 MR. POLLOCK: That would be  
9 1965?

10 MR. RICHARD: Yes.

11 THE COMMISSIONER: What was  
12 the nature of the work of those men?

13 MR. RICHARD: Installing  
14 gas and servicing.

15 THE COMMISSIONER: In the cities?

16 MR. RICHARD: In the cities  
17 and the immediate area, the two cities.

18 THE COMMISSIONER: They have  
19 a headquarters here, I suppose?

20 MR. RICHARD: And an office  
21 in Fort William.

22 THE COMMISSIONER: How many  
23 men would be involved?

24 MR. RICHARD: I think there  
25 were about 15 at the time, a small local.

26 THE COMMISSIONER: And that  
27 is a separate union?

28 MR. RICHARD: Yes.

29 THE COMMISSIONER: I suppose  
30 those men require some skill for that work?



1 MR. RICHARD: A variety of  
2 skills, I would say, some of them very detailed,  
3 others not so much.

4 THE COMMISSIONER: On a  
5 situation of that type, are you bothered in  
6 any way by strike breakers?

7 MR. RICHARD: In this case,  
8 no, they were not. In this area there are  
9 not too many strike breakers because this  
10 area is proportionate to the rest of Canada  
11 and it is very highly organized.

12 THE COMMISSIONER: Pretty well  
13 organized.

14 MR. RICHARD: I would say well  
15 over the national average.

16 THE COMMISSIONER: So really  
17 that is not a present, pressing help that  
18 you seek?

19 MR. RICHARD: Not in this area.

20 MR. POLLOCK: Was it the gas  
21 company that got the injunction in that case  
22 or was it the construction company?

23 MR. RICHARD: It could have  
24 been the construction company, it was in the  
25 area of that, I know.

26 MR. POLLOCK: You don't know  
27 the name of the construction company?

28 MR. RICHARD: Would it be Bird?

29 THE COMMISSIONER: Is it a  
30 private company that distributes the gas in this





1 city?

2 MR. RICHARD: Well, it is one  
3 of the big gas complexes of Northern and  
4 Central. It is completely owned.

5 THE COMMISSIONER: It is not  
6 done by the city?

7 MR. RICHARD: No, Twin City Gas,  
8 which is a completely owned subsidiary of  
9 Northern and Central.

10 THE COMMISSIONER: Don't they  
11 have their own employees for the installation  
12 of gas?

13 MR. RICHARD: Yes.

14 THE COMMISSIONER: Wouldn't this  
15 strike be a strike against the gas company?

16 MR. RICHARD: Yes, it was, Twin  
17 City Gas.

18 THE COMMISSIONER: What workers  
19 were striking, the gas people?

20 MR. RICHARD: The gas company  
21 people, and then they picketed the Centennial  
22 Square Project where they had been working  
23 immediately prior to the strike, doing an  
24 installation.

25 MR. POLLOCK: Would you have  
26 any idea again, on the records of your  
27 organization, of the names on the injunctions  
28 that have been granted in the past 5 or 10  
29 years, or any method of obtaining that information?

30 MR. RICHARD: It could be possible,



1 I believe, but it would be a protracted job  
2 right now in our case. As you might know,  
3 we have just moved our office about a month  
4 ago and we are in the process of catching up  
5 on a lot of stuff. We have some records  
6 but not too many of them.

7 MR. POLLOCK: Has there been  
8 in those hearings in the area in, say, Port  
9 Arthur, for example, where notice has been  
10 given to the employees or people of the union,  
11 against whom the order is sought, against the  
12 individuals, I assume - has there been in any  
13 of those circumstances, appearances made at  
14 the hearing by the unions involved or by  
15 employees or the individuals named?

16 MR. RICHARD: In one case here,  
17 where I mentioned lack of communication, this  
18 is what you are trying to get at, now I personally  
19 did not know it, but it was reported to us  
20 and there was quite a hurrah about it at the  
21 time that the injunction was issued against  
22 certain people who were not available, that  
23 we had understood had been away for about ten  
24 days back in the bush country and by the time  
25 they got back to get the order that was to be  
26 served on them, the hearing had taken place.  
27 I have heard of this. Now, I am not going  
28 to say it is absolute because I have not been  
29 able to put a check on it myself.

30 THE COMMISSIONER: I suppose you



1 have your headquarters here in this city?

2 MR. RICHARD: Yes, the New  
3 Labour Citadel.

4 THE COMMISSIONER: And in the  
5 cities you have named, including these two,  
6 you have county court judges?

7 MR. RICHARD: There are two  
8 in Thunder Bay, here and a couple in the area.

9 Your Honour, this is Frank  
10 Mazur, he is an executive officer of our  
11 Labour Council.

12 MR. POLLOCK: In the gas company  
13 strike again, it was a lawful strike, was it?  
14 They had waited through the conciliation  
15 procedure and all that?

16 MR. RICHARD: Yes.

17 MR. POLLOCK: And it was a  
18 shopping centre that they shut down, is that  
19 right?

20 MR. RICHARD: Yes. As I  
21 pointed out and brought out in this, the thing  
22 that got me was that once the full facts were  
23 presented to the Supreme Court in Toronto,  
24 there was quite an amendment in the order  
25 itself. I understand quite a few of these  
26 have gone by default. I guess you would  
27 have to take the chance or get the records  
28 of the court in Toronto in Osgoode Hall, perhaps,  
29 to find these, but we know of a number that  
30 have gone just because it was too late to hear





1 about it or just inability to attend.

2 MR. POLLOCK: I have had some  
3 difficulty trying to locate the particular  
4 injunction about which you have been speaking.  
5 I wonder if you could provide me with some  
6 of the material when you get back to your  
7 office and sort it out.

8 MR. RICHARD: Would it be good  
9 enough if I could mail it to you?

10 MR. POLLOCK: Oh, yes, I mean  
11 by mail, not by hand.

12 MR. RICHARD: We have a good  
13 portion of it there, the original order that  
14 was issued here and the actual copy of the  
15 order from the Supreme Court.

16 MR. POLLOCK: That would be  
17 very helpful if we could get that information.  
18 It would also be very helpful if you could  
19 provide us with any other information. In  
20 some cases injunctions that are obtained  
21 ex parte that don't get to Toronto, so to speak,  
22 they are difficult to obtain information about  
23 and perhaps through a diligent search of your  
24 office, you might turn up some of these things  
25 and it might open a channel of communication  
26 so we can find out more information about  
27 those particular disputes.

28 MR. RICHARD: As I say, they  
29 are directly concerned, that I know of, two  
30 of them, and only one that I know of that has



*Toronto, Ontario*

1 gone to Toronto. These could be brought - it  
2 will take some time, I can't promise when  
3 you will get them, but we will make an  
4 attempt to get this for you.

5 MR. POLLOCK: Fine, thank you.

6 On the general functioning  
7 of the Labour Council in Fort William and  
8 Port Arthur, I take it, as most labour councils  
9 operate, you are called upon at times to  
10 support or give support by various methods,  
11 either financially or by public attendance  
12 at the site to bolster the numbers, I suppose,  
13 in picketing. First of all, is that  
14 assumption correct, that you do participate?

15 MR. RICHARD: We do in a  
16 token manner but I will say that this area  
17 is very well organized and we do not have  
18 too many problems with strike breakers, shall  
19 we call them. There have been a few times  
20 when a token picket has been put out but  
21 basically, picketing has been done by union  
22 participants.

23 MR. POLLOCK: I noticed on  
24 the way in from the airport yesterday that  
25 there was a dispute that was going on and  
26 we heard something about it yesterday morning,  
27 between the painters union and some of the  
28 contractors. I have not noticed around town  
29 too many pickets. I guess that is the evidence  
30 of the high degree of organization in this area.



1 MR. RICHARD: And the high  
2 level of employment at the present time in  
3 the construction field.

4 MR. POLLOCK: I guess that is  
5 a common factor in most places, even in  
6 Toronto, I think. The skilled trades in  
7 construction are pretty hard to find. So  
8 that you aren't bothered at all - or at least  
9 to any great extent - by strike breakers and  
10 you really are probably blessed as far as  
11 the trade union movement is concerned, in  
12 that field.

13 MR. RICHARD: I put it this  
14 way: Rather than anything imposed from the  
15 top, the trade union movement grew out of  
16 itself in this area. We built our own  
17 trade union, we didn't have any brothers come  
18 in and build it for us. We have been all  
19 closely linked right from the bottom and I  
20 think this has brushed off. My grandfather  
21 here, was a trade unionist, my father was one  
22 and three of my brothers are, two of them  
23 active, but this is, shall we say, perhaps  
24 one of the things in this area that a lot  
25 of other parts of the country do not appreciate.

26 MR. POLLOCK: I noticed the  
27 button, I think it is carpenters, isn't it?

28 MR. RICHARD: This one is C.L.C.

29 MR. POLLOCK: The largest union  
30 around here, I take it, would be the carpenters





1 union and its affiliates, is that correct?

2 MR. RICHARD: It would be pretty  
3 close, because lumber and sawmill has been  
4 with them and you have two other carpenter  
5 locals but I think it would be a pretty close  
6 match with the sulphite workers in this area.  
7 You have got a number of mills in the immediate  
8 area, four in the two cities and three not  
9 too far away.

10 MR. POLLOCK: Well, we are  
11 indeed obliged for the clarity and the brevity  
12 of your submission today and perhaps if you  
13 could provide us with that very necessary  
14 information, it would be appreciated.

15 MR. RICHARD: I will do my  
16 utmost to get this for you and just bring  
17 to the point that we brought out that a  
18 lot of this has happened by default, we can  
19 bring you one instance where we know that  
20 the order was amended anyway.

21 MR. POLLOCK: Mr. Mazur, have  
22 you ~~got~~ anything / to add to the eloquence of  
23 your Secretary-Treasurer?

24 MR. MAZUR: No, I think the  
25 Secretary-Treasurer pretty well covered the  
26 facts pretty thoroughly.

27 MR. POLLOCK: Well, if in the  
28 near future you can think of any other  
29 suggestions or amplification of your submission,  
30 we would be only too pleased to receive them by



1 mail, if that is easier to get out of here than  
2 it is to get a body out.

3 MR. RICHARD: This is one  
4 of our problems, as I say. We have known  
5 of some who have had problems in this,  
6 especially dealing with the Department of  
7 Labour at times and it has been this way.  
8 This is why we just wanted to bring it to  
9 your attention. If I can dig this out we  
10 will see that you get it.

11 MR. POLLOCK: Much obliged,  
12 thank you very much.

13 I call the Dryden and District  
14 Labour Council, L.D. Stuart, President. (No  
15 answer.)

16 I call the Fort William  
17 Typographical Union, Local No. 417. (No answer.)

18 The Hearings of this Commission  
19 in Port Arthur are adjourned sine die.

20 ---Adjournment  
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BINDING SECT. OCT 20 1967



